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Additional Questions and Replies

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LEGISLATIVE DEVELOPMENTS

Question 1

- **The Working Party needs to review all legislation for WTO conformity before the Working Party can complete its job.**
- **We hope Viet Nam will be sending enacted and draft legislation to the Secretariat throughout the summer.**
- **The following laws and ordinances are listed on the National Assembly's 2005-06 plan of work:**
 - **Pharmaceutical Law, Law on Banking Transferable Instruments, Law Amending and Supplementing Certain Articles of the Mineral Law, Information Technology Law, Cinematographic Law, Ordinance on Investment and Capital Construction, Law on Technology Transfer, and Ordinance on High Technology.**
- **Since laws on these subjects would appear to have some relevance to Viet Nam's WTO accession, please provide copies of the enacted and/or draft legislation for the Working Party's review and include them in the Legislative Action Plan.**

Answer:

Viet Nam shall make its best efforts to submit WTO-related normative legal documents enacted and planned to be enacted in 2005 to the Secretariat prior to the 10th Session of the Working Party on the Accession of Viet Nam to the WTO.

II. ECONOMIC POLICIES

- **Monetary and Fiscal Policy**

Question 2

We refer to the reply to Question 2 of WT/ACC/VNM/36. The purpose of the Question was to seek information to improve the description of reform intentions in relation to policies in this area. We would not necessarily agree that this policy area is unrelated to the WTO: for example, taxation provisions for residents and non-residents could affect the implementation of services commitments.

- **We would appreciate information on plans to replace the Ordinance on Income Tax of High Income Earners with 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; and**
- **We would appreciate clarification on when it is proposed that the Law on Personal Income Tax will be enacted.**

Answer:

Current regulations of Viet Nam on personal income tax imposed on high-income earners do not entail any unfavourable discriminatory treatment toward foreigners in comparison with the Vietnamese. In fact, foreigners who have taxable incomes derived from Viet Nam are treated more favourably in comparison with the Vietnamese regarding their personal income tax. Therefore, purely

from perspectives of personal income tax, Viet Nam's current regulations have been creating an enabling environment for the strict observation of any services commitments in its Schedule of Specific Commitments. In addition, Viet Nam would like to note that any issue relating to market access in services would be dealt with under bilateral market access negotiations in services.

In previous Working Party meetings, Viet Nam has informed Members that in an attempt to further rationalize personal income tax system in accordance with overall tax reform program in Viet Nam, a Personal Income Tax Law will be submitted to the National Assembly in 2007 in order to replace the Ordinance on Income Tax of High Income Earners. Viet Nam has also stated that the Personal Income Tax Law should follow general guiding principle of being compatible with relevant international standards and norms. The Government agency responsible for drafting the Law is currently at the stage of studying and researching relevant issues but has already identified multiple issues of diverse opinions. In this context, though the Government firmly reiterates its intention to submit the draft Law to the National Assembly in 2007, it would be difficult to confirm precisely as to when the Law can actually be promulgated.

Question 3

We particularly appreciated hearing that Viet Nam is nearing adoption of Article VIII of the IMF Articles of Agreement. Recording in the draft Working Party report the procedures Viet Nam is to adopt Article VIII would strengthen the Report. We invite Viet Nam to provide this information to the Working Party.

Answer:

Viet Nam has been completing necessary documents and procedures to request the IMF to officially announce Viet Nam's adoption of Article VIII of the IMF Articles of Agreement. In particular:

- The Draft Decree on the Amendments of and Supplements to the Government Decree No. 63/1998/ND-CP dated 19 August 1998 on Foreign Exchange Control has been submitted to the Government for approval and expected to be issued in July 2005. The Decree will repeal all remaining foreign exchange restrictions on payments and transfers for current account transactions and also provide a concept of international current account transactions in compliance with the IMF's definition.
- After the issuance of the Decree, Viet Nam shall request the IMF's official announcement of Viet Nam's adoption of Article VIII of the IMF Articles of Agreement.
- **Investment Regime**

Question 4

We thank Viet Nam for the information provided in the reply to Question 7 of WT/ACC/VNM/36 in the form of a definitive list of sectors prohibited to private investment under the Law on Enterprises.

- **We request that this list be transposed to a table in the report, with an additional column listing the corresponding explanation for the exclusion; and**
- **We seek clarification as to whether this means that all sectors and activities in which fully state-owned and equitized (partially privatized) enterprises currently operate, except the activities listed in the reply to Question 7 of WT/ACC/VNM/36, are open to private investment.**

Answer:

- Justification for the exclusion:

Prohibited business sectors/lines	Justification/Rationale
Trading in weapons, ammunition, military equipment, military items and specialized military technical equipment of the armed forces	Justifiable on the grounds of security necessity.
Trading in explosives, toxic chemicals, and radioactive substances	Justifiable on the grounds of security and safety necessity: The use of these items needs to be restricted/regulated due to their high fatal risk.
Trading in drugs of addiction	Justifiable on the grounds of human health and social order.
Prostitution, organizing prostitution services and trading in women and children	Justifiable on the grounds of cultural and moral necessity (such activities are considered as immoral and criminal).
Providing gambling services or operating gambling venues	Justifiable on the grounds of security, public order and cultural necessity.
Trading in chemical substances of high toxicity	Justifiable on the grounds of human health.
Trading in any items which belong to the historical, cultural or museum heritage	Justifiable on the grounds of cultural preservation necessity.
Trading in reactionary cultural products, pornographic or superstitious items, or items which have an adverse effect on personal development	Justifiable on the grounds of security and cultural necessity.
Trading in all types of firecrackers	Justifiable on the grounds of human health: Firecrackers cause numerous accidents and injuries.
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	Justifiable on the grounds of natural and environment protection.
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	Justifiable on the grounds of human health, safety, education, public order and security.

Viet Nam is considering this issue within the context of the draft Investment Law and draft Enterprise Law.

Question 5

We note that trading in "reactionary cultural products" is included in the list of sectors prohibited to private investment under the Law on Enterprises.

We would be grateful for advice on whether any criteria have been developed for determining the definition of "reactionary cultural products" (paragraph 127 of WT/ACC/SPEC/VNM/5 refers).

Answer:

Paragraph 127 of WT/ACC/SPEC/VNM/5 has provided a general concept for the determination of prohibited reactionary cultural products.

"Reactionary cultural products" could be defined, *inter alia*, as products containing contents:

1. To propagate against Viet Nam; to destroy the solidarity of the Vietnamese ethnic community;
2. To propagate and excite aggressive war; to arouse hatred among the peoples and nations in the world; to excite violence; to communicate such thoughts and opinions;
3. To leak national, military, security, and other secrets provided for in the laws and regulations;
4. To distort historic truth; to hurt reputation of the nation, national heroes, etc.

Question 6

Regarding the reply to Question 8 of WT/ACC/VNM/36, we would be grateful if a definitive list of sectors where non-automatic business licenses are required could be included as a table in the report. All business licence requirements to engage in importation or exportation should be included as separate entries in this list if they are distinct from other business licence requirements. The table should include columns for (1) the sector/activity, (2) the conditions of the licence, and (3) the government body or bodies involved in the issuance and the approval of licenses.

Answer:

Conditional business sectors are categorized into (i) sectors requiring business licenses issued by the State competent authorities and (ii) sectors not requiring business licenses. Requirements on environmental and hygiene standards, food safety and hygiene, fire prevention and fight, social order, traffic safety and other requirements on business activities are inclusively referred to as the conditional business sectors not requiring business licenses.

Sectors/activities requiring business licenses, licensing conditions/requirements and procedures are prescribed in applicable legal documents issued by the State competent authorities at different levels. Currently, Viet Nam is reviewing its business licensing system inclusive of various types of licenses and their licensing procedures. A comprehensive list of business licenses as requested will be provided as soon as this review is completed (probably prior to the 10th Session of the Working Party on the Accession of Viet Nam to the WTO).

Question 7

We thank Viet Nam for the reply to Question 9 of WT/ACC/VNM/36.

- We would be interested to see full descriptions of the registration process and the criteria for granting licenses in relation to each of the five non-automatic business licence categories mentioned in paragraph 25 of WT/ACC/SPEC/VNM/5. These details should be included in the report.
- We note that that the reply to Question 9 of WT/ACC/VNM/36 only lists eight sectors/activities where practising certificates are required. Do these eight sectors/activities correspond to the category, "(iv) sectors requiring professional licence", in paragraph 25 of WT/ACC/SPEC/VNM/5? If there is a difference, please indicate what it is.

Answer:

An unofficial English translation of the Government Decree No. 109/2004/ND-CP dated 2 April 2004 on Business Registration can be obtained through document WT/ACC/VNM/38/Add.1.

Question 8

We appreciate the advice (reply to Question 11 of WT/ACC/VNM/36) that a common Investment Law and a uniform Enterprise Law are being drafted and scheduled to be submitted to the National Assembly's 8th Session in October 2005 for consideration, and that they will be submitted to the Working Party as soon as they are ready. We look forward to seeing the copies of these Laws, if possible in draft form prior to enactment.

Answer:

The draft (common) Investment Law has been submitted to the Working Party before its Informal Meeting on 20 May 2005 (Please refer to document WT/ACC/VNM/37/Add.1).

The draft (uniform) Enterprise Law shall be submitted to the Working Party as an attachment to this document.

Question 9

We would be grateful for an indication of or update on Viet Nam's plans to be incorporated in the report in respect of the following reforms:

- the elimination of requirements for foreign investment in certain sectors only in the form of joint ventures or business cooperation contracts (paragraph 28 of WT/ACC/SPEC/VNM/5);
- the elimination of remaining regulations discriminating between domestic and foreign investment, including *inter alia* under the common Investment Law and the uniform Enterprise Law (paragraph 29 of WT/ACC/SPEC/VNM/5);
- the elimination of dual pricing for electricity by 31 December 2005 (paragraph 29 of WT/ACC/SPEC/VNM/5).

Answer:

The provisions on these issues of the draft (common) Investment Law and the draft (uniform) Enterprise Law are being designed in conformity with the WTO's Agreements and Viet Nam's accession commitments.

The elimination of dual pricing system discriminating between domestic and foreign investors has been included in the draft Investment Law. The discriminatory dual pricing electricity tariff shall be abolished upon accession.

Question 10

The replies to Questions 13 and 14 of WT/ACC/VNM/36 indicate that provisions relating to subsidies contingent on export performance or on the use of domestic goods are inscribed in certain investment licenses.

We would be grateful if Viet Nam could include in the report advice of how it will cancel, no later than the date of its accession to the WTO, all provisions in existing investment licenses relating to any subsidy contingent on export performance or on the use of domestic goods, without invalidating other provisions of those licenses.

Answer:

Corporate income tax incentives contingent on export performance are specified in the Investment Licenses. Viet Nam would like to seek a transitional period to phase out these prohibited subsidies.

No later than the expiry of the transitional period to be agreed with the WTO Members, Viet Nam shall nullify the provisions granting such prohibited subsidies without prejudice to other provisions of the issued Investment Licenses.

Question 11

It is our expectation that Viet Nam will refrain, from the date of accession, from issuing any new investment licenses that contain such provisions.

We request that Viet Nam include such a commitment in the report.

Answer:

Corporate income tax incentives contingent on export performance are specified in the Investment Licenses. Viet Nam would like to seek a transitional period to phase out these prohibited subsidies.

No later than the expiry of the transitional period to be agreed with the WTO Members, Viet Nam shall nullify the provisions granting such prohibited subsidies without prejudice to other provisions of the issued Investment Licenses.

Question 12

We refer to the reply to Question 15 of WT/ACC/VNM/36. We hope that provisions in the common Investment Law and all other laws and legal acts in force in Viet Nam upon accession will facilitate full conformity with the provisions of Article 3 of the Agreement on Subsidies and Countervailing Measures.

We request that Viet Nam indicate in the report how it will ensure this.

Answer:

Viet Nam confirms that provisions in the (common) Investment Law as well as all other laws shall be brought into conformity with Viet Nam's WTO accession commitments regarding prohibited subsidies as defined by Article 3 of the Agreement on Subsidies and Countervailing Measures.

Question 13

We thank Viet Nam for the reply provided to Question 18 of WT/ACC/VNM/36.

- **We look forward to seeing an English translation of the Law on amendments of and supplements to some articles of the Mineral Law, if possible in draft form prior to enactment in the coming months.**
- **We would be grateful if details of the grounds for refusal of an investment licence at the exploration stage could be provided and included in the report.**

Answer:

The Law on the Amendments of and Supplements to some Articles of the Mineral Law will be provided after the Order of Announcement is signed by the President of the State (i.e. the time when the law is officially made public).

No provision of the Mineral Law of 1996 as well as of the new Law on the Amendments of and Supplements to some Articles of the Mineral Law provides for a refusal to grant investment licenses at the exploration stage.

Question 14

We thank Viet Nam for the information given in the reply to Question 20 of WT/ACC/VNM/36 that it will abolish Decision No. 718/2001/QD-BKH of 7 December 2001 stipulating the list of industrial products that are subject to the export ratio requirement and would not apply such a requirement in investment licenses. We also appreciate the commitment given in paragraph 220 of WT/ACC/SPEC/VNM/5 to eliminate the 80 per cent export ratio requirement upon accession.

- We request that details on when the Decision would be abolished and the export ratio requirements eliminated be included in the report;
- We would be grateful for full details of export ratio requirements other than those that Viet Nam has already agreed to eliminate upon accession; and
- We would also be grateful for a commitment from Viet Nam to eliminate all export ratio requirements upon accession to be included in the report.

Answer:

The mentioned Decision will be abolished upon Viet Nam's accession to WTO.

Viet Nam is maintaining no mandatory export ratio requirements other than those it has already committed to eliminate upon accession.

Question 15

Regarding the reply to Question 21 of WT/ACC/VNM/36, we would be grateful if Decree No. 76/2000/ND-CP of 15 December 2000 could be listed in Annex 1 of the report.

Answer:

We agree with the suggestion (this Decree is available through WT/ACC/VNM/36/Add.2).

Question 16

Regarding the reply to Question 7 of WT/ACC/VNM/36, we would be happy to have Viet Nam's commitment that all future additions and deletions to the list of prohibited business sectors will apply equally to domestic and foreign companies/investors.

Answer:

Viet Nam can confirm that all future additions and deletions to the list of prohibited business sectors will be in conformity with the WTO's Agreements and Viet Nam's accession commitments.

Question 17

Regarding the reply to Question 11 of WT/ACC/VNM/36, could Viet Nam explain what is the current state of play as regards the adoption of the Enterprise Law and when the draft law would be available for the Working Party.

Answer:

The (uniform) Enterprise Law is scheduled to be submitted for the National Assembly's discussion and approval at its October 2005 Session. The new draft (uniform) Enterprise Law is provided as an attachment to this document.

Question 18

Regarding the reply to Question 20 of WT/ACC/VNM/36, we would like to see a commitment to eliminate export the ratio requirement to be added in the draft Working Party Report. We propose the following text:

"The representative of Viet Nam confirmed that upon accession, Viet Nam will eliminate the export ratio requirement for all products and will not apply such requirement in investment licenses, including those which are issued prior to accession."

In general:

- **Could Viet Nam explain the differences between the draft Law on Investment submitted to the Working Party and the draft Common Investment law? and**
- **When will the draft Common Investment Law be submitted to the Working Party?**

Answer:

Viet Nam agrees to this commitment language as proposed.

There is no difference between the draft "Investment Law" and the draft "Common Investment Law". The previously title "Common Investment Law" simply clarifies the purpose of drafting the Law is to have it applicable to both domestic and foreign investors. The draft Law has currently reached the completion stage and its drafting purpose has also been fully aware of and duly satisfied. Thus, the title word "Common" is no longer necessary.

Question 19

We thank Viet Nam for submitting the draft Law on Investment to the Working Party. We have the following comments to make on the draft law:

- (a) **Article 21 – Prohibited investment sectors. Article 21.3 foresees a possibility for supplementing the list of sectors where investment is prohibited. Could Viet Nam explain why they consider further additions to the list to be necessary and why it has not already drafted an exclusive list of such sectors?**

Could Viet Nam list the sectors that are envisaged to be added to the prohibited sectors in Appendix I in the future?

- (b) **Article 22 – Restricted investment sectors. Article 22.2 stipulates that the Ministry of Planning and Investment must annually revise the list of sectors of restricted investment sectors. We would like to stress the doubtfulness of such practice in view of the legal certainty and stability of the investment environment.**

Could Viet Nam explain the rationale of such annual revision of the list of sectors of restricted investment? Why has Viet Nam not already drafted an exclusive list of such sectors?

- (c) **Article 24:** Could Viet Nam clarify whether the maximum amount of foreign ownership of 30 per cent in the previous law has been replaced by 49 per cent in the new draft Law on Investment?

What are the special cases for which a maximum foreign ownership of 70 per cent is foreseen under condition of a special approval.

- (d) **Articles 22 to 24:** Could Viet Nam clarify the meaning of "foreign investors are restricted from making investments" in Article 22? We note Article 24 limits the maximum capital held by foreigners in the restricted sectors to 49 per cent. We also note that Article 22 states that "if a foreign investor makes investment in any of these sectors, he/she must obtain approval from the Prime Minister."

Does the restriction in Article 22 only indicate restriction of maximum shareholding by foreign investors or is the Prime Minister' approval required in addition in all cases when foreigner wants to invest in the restricted sector? If Articles 22 to 24 impose both a cap to a maximum shareholding and the requirement for the Prime Minister's approval for foreign investors in restricted sectors, this does seem excessive and unnecessary double-restriction. If this is the case, could Viet Nam explain why a separate Prime Minister's approval is necessary for foreign investors, if the shareholding is already limited to a minority of the shares?

- (f) **Chapter V – Investment encouragements and incentives.** We note that several provisions under this chapter indicate provision of subsidies which are prohibited under the WTO Agreement on Subsidies and Countervailing Measures:

Article 25: Viet Nam encourages investors to invest in the sector of production for exports (sector); and in the export-processing zones (location).

Article 27: "an investor making investments in a sector or location where investments are encouraged, shall be entitled to investment incentives".

Consequently, the combination of Article 25 and 27 the clearly indicates granting of prohibited export subsidies.

Article 29: incentive certificate sets out specific incentives and conditions for such incentives, specifically: (c) quantity of domestic raw materials to be used; (i) exportation of products or services respectively made or assembled. Consequently, (c) indicates granting of prohibited local content subsidies and (i) export subsidies.

We urge Viet Nam to eliminate all prohibited subsidies upon accession. We would also request Viet Nam to provide an updated list of all subsidies/subsidy programmes granted. The list should take into account the draft Law on Investment, and possible other updated legal provisions, and indicate the approximate value of incentives provided under each scheme per annum.

- (g) **Chapter VI – State administration of investment activities**

Article 49.7: State administration of investment comprise the following: Inspect, examine and supervise investment activities.

Article 53.5: Provincial people's committees shall carry out the function of state administration of investment activities in their respective localities within the scope of

their function and authority: to examine and inspect investment activities in their location in accordance with the law.

Could Viet Nam explain the exact content of these provisions, what does it mean in practice? For which purposes and under which conditions is the inspection and examination of the investment activities foreseen?

Article 55: Could Viet Nam define "investment project" in the meaning of the Law on Investment?

Answer:

(a) Article 21.3 in the previous version of the draft Investment Law has been replaced by Article 28 in the latest version of the draft Investment Law. According to this Article 28, investment activities that are harmful to national defense, security, social order and safety, historical, cultural traditions, morality, Vietnamese fine customs and people's health or that exhaust natural resources and destroy the ecological environment, shall be prohibited. The draft Law does not provide for amendments and supplements to the sectors where investments are prohibited. The draft Law instead mandates the Government to specify such List in accordance with the provision of Article 28.

(b) Article 22 in the previous version of the draft Investment Law has been replaced by Article 27 in the latest version of the draft Investment Law. According to Article 27, the amendments and supplements to the sectors where investments are conditional shall be based on the socio-economic development requirements and other conditions and shall be in conformity with commitments made by Viet Nam in international treaties which Viet Nam has signed or acceded to.

The List of sectors where investments are conditional may be amended and/or supplemented as the Investment Law cannot foresee new developments in the future. However, any amendments and supplements to such List must be based on the above principle.

(c) The question may be referring to Article 22, not Article 24 of the previous version of the draft Investment Law. Nevertheless, this Article 22 as well as List II regulating the Prime Minister's approval of foreign investors' purchases of shares in State owned enterprises no longer exists in the latest version of the draft Investment Law. Please refer to Article 23 and Article 27 of the latest version of the draft Investment Law.

(d) Articles from 22 to 24 in the latest version of the draft Investment Law have been revised and the question is no longer relevant. Please refer to Article 27 of the latest version of the draft Investment Law.

(f) The latest version of the draft Investment Law has abolished regulations on conditions for granting investment incentives intended in previous versions of the draft Investment Law.

As mentioned in many Working Party's Sessions, apart from prohibited subsidies that Viet Nam has already committed to eliminate upon accession, Viet Nam seeks for a transitional period to phase out other prohibited subsidies.

(g) According to the latest version of the draft Investment Law and in fact, inspection and examination of investment activities are aimed at assisting investors to comply with laws and regulations on environmental protection, labour safety, fire and explosion prevention and fight, etc.

The term "Investment Project" in the draft Investment Law is understood as the investors' proposal to make investment for a certain period of time.

Question 20

The replies to our Questions on investment helped clarify a number of issues, but we still need further strengthening of our understanding of the facts.

In particular, we would like to explore more fully the scope and legal character of investment licenses.

Answer:

Investment licenses are issued by the Ministry of Planning and Investment or provincial People's Committees or provincial Industrial Zone Management Boards to investors to implement the foreign direct investment projects in Viet Nam. The main contents of an investment license are: name, address of the investor(s); objectives and scope of investment; investment location (i.e. where the investment project is implemented); project's registered investment capital and legal capital, proportion of capital contribution of parties to Joint Venture (as applicable to joint venture projects); operation duration of investment project; rights and obligations of investor(s), etc. An investment licence demonstrates rights and obligation of both the State authorities and investor(s) in implementing the project with the above mentioned elements.

Viet Nam confirms that:

- The provision on transfer of assets without compensation from foreign investor(s) to the State of Viet Nam after the termination of the project is optional and at the investor's discretion. Vietnamese laws and regulations do not, in any circumstances, oblige foreign investors to transfer, without compensation, their assets to the State of Viet Nam at the termination of the project's duration.
- Since 1 January 2004, the tax on transferring profits abroad previously applied to foreign investors has no longer been stipulated in investment licenses as a result of the elimination of this kind of tax by amendments to the Law on Corporate Income Tax.
- The obligation of environment protection stipulated in investment licenses is applied non-discriminatorily to both foreign and domestic investors.

- **State Ownership and Privatization**

Question 21

Regarding the reply to Question 22 of WT/ACC/VNM/36, we would be grateful if Viet Nam could indicate specifically what the Ordinance on Posts and Telecommunications (as well as measures implementing it) provides for as regards the use of gateways and networks (for example, non-discrimination of operators using leased lines). We would like to see this information included in the report.

Answer:

Article 43 of the Ordinance on Posts and Telecommunications and Articles 27, 28, 29, 30, 31, 32, 33 and 60 of the Decree on detailed implementation of some provisions of the Ordinance on Posts and Telecommunications are designed to ensure the rights and obligations of telecommunications providers to access to and use of public telecommunications transport networks of each other.

Question 22

Viet Nam states in the reply to Question 23 of WT/ACC/VNM/36 that industries such as management and operation of irrigation works, plant varieties/seeds and animal breeding, and salt production and distribution will be equitized with the State retaining controlling equity.

We would be grateful if further details on plans to equitize these industries could be provided and reflected in the report.

Answer:

Equitization of State-owned enterprises (SOEs) operating in these industries is in accordance with the master plans of SOEs transformation and restructuring of respective ministries and local authorities. It is expected that the equitization plan of SOEs shall be fundamentally completed by the end of 2006. It should be also noted that these industries have so far not attracted private investors since they remain facing a lot of difficulties and in most cases generate low or even no profits.

Regarding the current state of play of equitization in these industries:

- The Ministry of Agriculture and Rural Development has three enterprises operating in management and operation of irrigation works. All of them are public interest enterprises. Therefore, the State plans to retain 100 per cent ownership in these SOEs.
- All SOEs which are producers and suppliers of plant varieties/seeds and animal breeding have been equitized.
- Ministry of Agriculture and Rural Development has ten enterprises producing and trading in salt. Among them, five have so far been equitized. It is planned that the equitization of the remaining five enterprises shall be completed in 2005.
- SOEs under the management of local authorities which produce and trade in salt will also be equitized.

Some enterprises operating in these industries which are planned to be equitized includes:

- Vinh Long Irrigation Works Exploitation Company
- Plant varieties/seeds companies in Quang Binh and Thua Thien Hue provinces
- Animal breeding companies (under the General Corporation of Animal Breeding): Chau Thanh chicken breeding plant, Central Cow Breeding Plantation
- Salt companies: Central Salt Company, Bac Lieu Salt Company, Ninh Thuan Salt Company and Thai Nguyen Iodine Salt Company.

Question 23

Regarding the reply to Question 23 of WT/ACC/VNM/36, we note the social policy objective in relation to the production of salt.

- **We would be grateful if Viet Nam could clarify the rationale for state involvement in the distribution of salt, and reflect this clarification in the report.**
- **We would appreciate clarification that there are no restrictions on private enterprises, including enterprises without state equity, to undertake the distribution of salt in Viet Nam, and would ask that such a clarification be reflected in the report.**
- **We would appreciate an indication of the enterprises that distribute salt in which the state has equity, and the percentages of equity held by the state.**

Answer:

Salt is considered an important agricultural commodity in Viet Nam. Salt production is concentrated in the coastal areas with the total acreage of above 20,000 ha. It generates main income for above 100,000 households of farmers. However, these farmer households' income is very low since the transformation of land of salt production to more productive agricultural cultivation is almost impractical. In order to improve the income for farmers producing salt, the Government of Viet Nam is, on the one hand, pursuing the programme of modernization of the salt industry. On the other hand, the Government applies tariff rate quota on imported salt with a view to securing employment and ensuring income stability for those farmers producing salt. Since salt production in Viet Nam is facing a lot of difficulties: the profitability is low, weather conditions are unstable, therefore, even though there is no restriction on entry, private enterprises tend not to invest in such industry. Consequently, all investments to improve land of salt production are made by the Government.

Salt distribution is not limited to the State owned enterprises only. The State involvement in distribution of salt is to ensure that the social needs, especially the needs of inhabitants in disadvantaged socio-economic areas where private enterprises could not satisfy, are sufficiently served. This does not mean that the private sector are restricted from participating in salt distribution. All enterprises, irrespective of their ownership, are free to engage in the production and distribution of salt.

Presently, there are 10 enterprises under the Ministry of Agriculture and Rural Development, a number of enterprises under the local authorities and numerous private enterprises that are participating in trading in salt in Viet Nam.

The General Corporation of Salt is responsible to buy salt produced by salt farmers. Annual salt production (raw salt) of Viet Nam is approximately 900,000 tons, of which about 350,000 tons are purchased by the General Corporation of Salt to satisfy the domestic demand and to store as the National Stock (public stockholding to satisfy salt demand during times of low production or bad harvest). Most of the salt purchased by the General Corporation of Salt from salt farmers are supplied as material to its 32 salt producing mills (many of them have been equitized) and to mountainous provinces for producing iodized salt for human consumption under the framework of the National Priority Programme (for providing iodized salt to all segments of the population).

At present, the distribution of salt to consumers within the country is mainly undertaken by private enterprises and small retailers.

Question 24

We would appreciate more information on the "production and supply of other products and services in accordance with the State's social policies" where state ownership will continue (reply to Question 23 of WT/ACC/VNM/36), and would ask that this information be reflected in the report. We seek:

- **detailed advice on what these products and services are;**
- **the state-owned or equitized enterprises operating in these areas;**
- **the specific social objectives that are advanced by state equity in relation to these activities; and**
- **advice of whether or not enterprises without state equity may undertake these activities.**

Answer:

The definition of public goods and services and criteria for identifying public goods and services have been provided in the reply to Question 47 of document WT/ACC/VNM/36. Please refer also to reply to Question 26 of this document for further information.

The Law on State-owned Enterprises of 1995 contained provisions relating to public interest State owned enterprises. However, in order to improve the efficiency of public interest activities and diversify the types of public interest providers, the Law on State-owned Enterprises of 2003 removed provisions of public interest State owned enterprises so as to permit enterprises of all economic sectors to participate in providing public goods and services through orders placed or tenders put up by the State. Accordingly, all enterprises, irrespective of their ownership, are entitled to participate in producing and supplying public goods and services.

Question 25

The reply to Question 29 of WT/ACC/VNM/36 indicates that, under Decision No. 155/2004/QD-TTg of 24 August 2004, the state is required to hold 100 per cent of capital in enterprises in "Other important sectors as decided by the Prime Minister".

- **We would be grateful for details of the sectors/activities decided by the Prime Minister where the state is required to hold 100 per cent of capital in enterprises.**
- **We request that information on the sectors/activities where the state is required to hold 100 per cent, or 50 per cent of capital, including those decided by the Prime Minister, be provided and tabulated in the report.**

Answer:

The current list of sectors and industries where the State shall retain 100 per cent ownership or controlling equity of enterprises has been provided in details in the reply to Question 29 of document WT/ACC/VNM/36.

It is possible that during the process of economic development, there may emerge some other sectors/activities affecting the stability and common interest of the society where entities of other economic sectors are not interested in or difficult to operate. In these limited cases, the Prime Minister shall consider and make the appropriate decisions.

Question 26

The reply to Question 29 of WT/ACC/VNM/36 indicates that, under Decision No. 155/2004/QD-TTg of 24 August 2004, the state is required to hold 100 per cent of capital in enterprises "ensuring essential needs for development of production and improvement of spiritual life of ethnic minorities living in mountainous, remote or distant areas".

We would be grateful for details of the sectors/activities relating to "essential needs for development of production".

Answer:

Sectors/activities relating to essential needs for development of production and improvement of spiritual life of ethnic minorities living in mountainous, remote or distant areas include: supply of text book, cultural products; supply of salt for human consumption and other essential commodities; supply of materials for agriculture and forest development.

Question 27

We thank Viet Nam for the information provided on State Owned Enterprises. The reply to Question 29 of WT/ACC/VNM/36 indicates that, under Decision No. 155/2004/QD-TTg of 24 August 2004, the State is required to hold 100 per cent, or 50 per cent or more, of capital in enterprises engaged in the following activities: mapping; petroleum processing; 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, pharmaceutical products, foods, petrol and oil; air or rail transportation; electricity generation; exploitation of minerals; manufacture of mechanical products; provision of telecommunications infrastructure; production of ferrous metals, cement, fertilizers, pesticides, table salt, milk, beer and alcohol; maritime transportation; banking and insurance; domestic animal breeding and seed cultivation; deep sea fishing services; road and waterway management and maintenance; and operation of fairs or exhibitions.

We would be interested in advice as to whether Viet Nam is intending to review the ownership arrangements for enterprises which are 100 per cent Government owned and where the Government has a controlling share. We would ask that such advice be reflected in the report.

Answer:

The List of sectors/activities that the State would retain 100 per cent ownership or controlling equity is reconsidered for the purpose of narrowing down further.

Question 28

The reply to Question 33 of WT/ACC/VNM/36 states: "The Government of Viet Nam does not maintain any restriction on the participation of private enterprises in fertilizer production." However, the reply to Question 29 states that the state is required to hold 50 per cent or more of the shares in certain fertilizer production.

We would appreciate clarification of the situation.

Answer:

Viet Nam does not have any restriction on the participation of non-State-owned enterprises in fertilizer production.

The reply to Question 29 in document WT/ACC/VNM/36 needs to be understood in the context of classification of existing State-owned enterprises according to criteria set out in the Decision No. 155/2004/QD-TTg for the purpose of their restructuring and/or equitization. Accordingly, this reply should be read as the State will hold more than 50 per cent of the total shares upon equitization of companies engaged in production of fertilizers and pesticides. It is only applicable to those enterprises previously wholly owned by the State and planned to be equitized. It is not applied to other forms of enterprises. As a result, the fertilizer production in Viet Nam is not restricted to only companies in which the State holds a controlling (over 50 per cent) equity. That the State is required to retain more than 50 per cent of the shares of the State-owned enterprises operating in fertilizer production upon their equitization is to ensure that the social needs, especially needs of inhabitants in disadvantaged socio-economic areas where Vietnamese private enterprises could hardly satisfy, are sufficiently served. This does not mean that private enterprises are restricted from participating in fertilizer production.

Therefore, information provided in the reply to Question 29 and that to Question 33 of document WT/ACC/VNM/36 is not inconsistent.

Question 29

The reply to Question 47 of WT/ACC/VNM/36 seems to suggest that there is no limit on what may be listed and no clear criteria for deciding what is or is not a public good or service. For example, it is not clear what goods or services would not be considered "essential" to the "economic-social life of the whole population, a community or a region".

How would Viet Nam define the scope for what could be considered to be a public good or service? What limits would be placed on what could be considered by the state to be a public good or service?

Answer:

The Government's Decree No. 31/2005/ND-CP dated 11 March 2005 on the production and distribution of public goods and services sets out three criteria for identifying public goods and services as indicated in the reply to Question 47 of document WT/ACC/VNM/36.

The scope for what could be considered to be public goods and services has been clearly specified in the List attached to the above mentioned Decree. Accordingly, any goods and services not entered into the List shall not be deemed public goods and services.

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" have also been detailed in the mentioned List.

Question 30

Regarding the reply to Question 25 of WT/ACC/VNM/36, will the new Law on Enterprises also apply to State owned companies?

Answer:

The draft Enterprise Law governs four legal forms of companies: limited liability company, shareholding company, partnership and private enterprise. This Law is also applied to State-owned enterprises if they are established in the form of limited liability companies, shareholding companies or partnerships.

Question 31

Regarding the reply to Question 29 of WT/ACC/VNM/36:

- (i) Could Viet Nam explain the rationale of requiring 100 per cent State ownership as regards publishing houses (list 1), production of scientific films, newsreels, documentaries and films for children.**
- (ii) Could Viet Nam explain what further sectors for 100 per cent State ownership are anticipated under the last item in the list "other important sectors as decided by the Prime Minister"? Why has Viet Nam not prepared a comprehensive list of all activities with 100 per cent State ownership requirement but left it open?**
- (iii) Could Viet Nam explain what is the rationale of requiring 100 per cent state ownership of companies in certain sectors on the basis of a criteria "leading in the application of**

cutting edge technology or high-technology" (list 3). Why should ownership of such companies only be reserved to State?

- (iv) **Could Viet Nam explain the rationale of requiring 100 per cent State ownership as regards processing of petroleum, building and repair of means of transportation by air, transportation by air or rail (list 3).**
- (v) **Could Viet Nam explain the rationale of requiring more than 50 per cent State ownership as regards manufacturing of electrical equipment and materials, specialised industrial machinery, machinery and equipment for agriculture, forestry and fishery, building and repair of means of transport by sea or rail, manufacture of cement by a modern technology, production of fertilizers and pesticides, production of 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, maritime transportation, monetary or insurance business and operation of floors of fairs and exhibitions?**

Answer:

- (i) Scientific films, documentaries and films for children are public goods and not included in the List of prohibited and restricted sectors/lines of business. However, since Vietnamese private producers of these types of films face difficulties in recovering their costs, they are not interested in or unable to participate in providing such public goods. Consequently, the State is required to retain 100 per cent ownership in the State-owned enterprises producing these types of films in order to ensure the social needs are sufficiently satisfied.
- (ii) The current general policy of the Government of Viet Nam is to refrain from establishing new State-owned enterprises and at the same time, narrow the scope of enterprises in which the State is maintaining 100 per cent ownership or holding a controlling equity. Nevertheless, it is possible that during the process of economic development, there may emerge some other sectors/activities affecting the stability and common interest of the society where entities of other economic sectors are not interested in or difficult to operate. In these limited number of cases, the Prime Minister shall consider and make the appropriate decisions.
- (iii-v) The mentioned sectors/industries are not restricted to only State-owned enterprises. Vietnamese private sector is permitted to participate in these sectors/activities. Foreign investors are also allowed to invest in these sector/activities in accordance with the international commitments made by Viet Nam.

The State retains 100 per cent ownership or controlling equity in companies engaged in such sectors/industries because these are vital economic and technological sectors and industries of the national economy which are high risk, require large investments and long pay-back time. Thus that the State-owned enterprises engaged in these sectors and industries are retained with 100 per cent State's ownership or equitized with the State's controlling equity is intended to generate impetus for speedy and strong development of other sectors and industries as well as other economic sectors.

Question 32

Regarding the reply to Question 33 of WT/ACC/VNM/36, we note a contradiction between information given under Question 29, which states that production of fertilizers is reserved to companies with more than 50 per cent State ownership, and Question 33, which states that all economic sectors are entitled to engage in production and trading of fertilizers and that there are no restrictions to the participation of private companies in fertilizer production.

Could Viet Nam clarify whether there are restrictions to private companies' share of ownership in the fertilizer producing companies.

Answer:

Viet Nam does not have any restriction on the participation of non-State-owned enterprises in fertilizer production.

The reply to Question 29 in document WT/ACC/VNM/36 needs to be understood in the context of classification of existing State-owned enterprises according to criteria set out in the Decision No. 155/2004/QĐ-TTg for the purpose of their restructuring and/or equitization. Accordingly, this reply should be read as the State will hold more than 50 per cent of the total shares upon equitization of companies engaged in production of fertilizers and pesticides. It is only applicable to those enterprises previously wholly owned by the State and planned to be equitized. It is not applied to other forms of enterprises. As a result, the fertilizer production in Viet Nam is not restricted to only companies in which the State holds a controlling (over 50 per cent) equity. That the State is required to retain more than 50 per cent of the shares of the State-owned enterprises operating in fertilizer production upon their equitization is to ensure that the social needs, especially needs of inhabitants in disadvantaged socio-economic areas where Vietnamese private enterprises could hardly satisfy, are sufficiently served. This does not mean that private enterprises are restricted from participating in fertilizer production.

Therefore, information provided in the reply to Question 29 and that to Question 33 of document WT/ACC/VNM/36 is not inconsistent.

Question 33

Regarding the reply to Question 41 of WT/ACC/VNM/36, could Viet Nam clarify whether the maximum level of foreign ownership has been raised from 30 per cent to 49 per cent in the new investment law?

Could Viet Nam explain the rationale of the explanation "The list of business sectors that foreign investors are entitled to purchase shares is issued by the Prime Minister"? Does this mean that foreign enterprises are not free to buy shares in all other companies but those subject to 100 per cent State ownership requirement?

Could Viet Nam provide a comprehensive list of business sectors where foreign investors are entitled to buy shares.

Answer:

Viet Nam is currently considering revising the List of business sectors/lines that foreign investors are entitled to purchase shares and the limitation applicable to shares purchased by foreign investors in a Vietnamese company. However, the new Investment Law shall not be able to provide for detailed regulations. Instead, the Prime Minister shall be mandated to issue such detailed regulations.

Question 34

On State Enterprises, we very much appreciate the data provided in Annex 5 of WT/ACC/VNM/36. We hope Viet Nam will use the summer to augment the information in this Annex.

However, clarity is still needed on important factual matters related to Viet Nam's state sector; in particular, the role of the state in the management of these enterprises remains obscure.

We reiterate our preference that this section and the section on state-trading be combined to reduce confusion and provide the best factual foundation.

We would appreciate receiving a copy of the State Enterprise Law of 2003 and copies of the laws listed in the answer to Question 34 of WT/ACC/VNM/36.

We would strongly recommend that the section on privatization stand alone.

The answer to Question 43 of WT/ACC/VNM/36 was very helpful, to follow up, would foreign owners be able to increase their holdings above 30 per cent after the initial distribution of shares?

Answer:

Regarding Annex 5 of document WT/ACC/VNM/36, we look forward to more specific questions so that Viet Nam could continue to augment its information of State-owned enterprises.

According to the provisions of the Law on SOEs of 2003, SOEs have legal status like limited liability companies and their operations are on an equal footing with private enterprises. The State, with the role of an investor, is only responsible within the limit of the capital invested in an enterprise without interfering in the business operations of the enterprise; SOEs can make their own decisions on business operations and are self-responsible for their operations. The Ministers and Chairmen of provincial People's Committees have the obligations to ensure the business autonomy and self-responsibility of the enterprises; do not interfere in the tasks within the authority of the Board of Management, the General Director, Director and managerial apparatus of the enterprises. The General Directors and Directors of large-sized SOEs are selected by the Board of Management for appointment or signing employment contracts, foreigners can also be hired to be directors. Directors of small-sized enterprises are selected by the Ministers and Chairmen of provincial People's Committees for appointment or signing employment contracts; these enterprises will gradually be equitized or converted into companies and the ownership of state capital (if any) of which will be transferred to corporations conducting investment and business with State capital; state bodies will no longer administer these enterprises.

The current regulation that the amount of shares equivalent to the maximum of 30 per cent of charter capital of a Vietnamese enterprise that foreign investors are allowed to purchase is applied to both initial sales of equity and listed equity. Revising the regulations on maximum level of equity purchased by foreign investors is being considered.

Viet Nam would consider the combination of the section on State Trading Enterprises and the section on State-owned Enterprises with a separate part on equitization, in accordance with the practice in other accessions.

Viet Nam would like to submit as attachments to this document the following legislation: the Law on State-owned Enterprises of 2003; the Government Decree No. 88/1999/ND-CP dated 1 September 1999 Issuing Regulations on Tendering (as amended on 15 May 2000 and 12 June 2003); the Government Decree No. 109/2004/ND-CP dated 2 April 2004 on Business Registration.

- **Pricing Policies**

Question 35

We are pleased to see that Viet Nam does not oppose the inclusion of our suggested text in the draft report (reply to Question 52 of WT/ACC/VNM/36), and we would hope to see this text duly included in the forthcoming redrafted report. We would comment that there is, however, no confusion involved in the inclusion of this text in this part of the report. The maintenance of support prices is a significant area of pricing policy in Viet Nam, and we are interested in whether minimum price measures will be applied in conformity with the requirements of Article III:4 of GATT 1994 and other WTO provisions. The application of any mandatory internal minimum price requirement to imported goods would not satisfy the requirements of Article III:4 of GATT 1994. We would be grateful for clarification of the following issues, and for their reflection in the report:

- whether processing plants are required to purchase imported cotton at the minimum prices applied to domestic cotton;
- whether the selected trading enterprises which receive interest rate subsidies to encourage purchases from domestic producers are required or are encouraged to purchase imported pork, sugar and rice at the same prices at which they are encouraged to purchase domestic like products;
- confirmation that sugar refineries are not required to purchase domestic raw sugar at a minimum price; and if there is such a minimum price requirement, clarification of whether sugar refineries are required to purchase imported raw sugar at the same minimum price;
- confirmation that purchasers of refined sugar are not required to purchase domestic sugar at a minimum price; and if there is such a minimum price requirement, clarification of whether such purchasers of refined sugar are required to purchase imported sugar at the same minimum price;
- confirmation that industrial users of salt are not required to submit information about their actual or proposed purchase prices for domestic or imported salt with their applications for tariff quota allocations;
- confirmation that the purchase price of domestic or imported salt is not a factor in determining the allocation of tariff quota to an industrial user of salt; and
- whether recipients of allocations of tariff quota are expected to conform to price norms of any kind in relation to imported salt, domestic salt or both.

Answer:

Pursuant to the existing regulations in the Ordinance on Prices, buying and selling prices of almost all products are set by businesses themselves. Businesses are responsible for their own trade activities and outcomes. Accordingly, there is no legal document obliging traders to sell, purchase, import or export cotton, sugar and salt at any minimum prices. Minimum prices in this context should not be deemed as prices imposed by the State. They are the pre-committed minimum price by the State to carry out product-specific price-support program that are implemented through agreement on contractual basis. Currently, Viet Nam's cotton and sugar processing plants are not purchasing domestic raw cotton and sugar cane at minimum prices but at a contractual price mutually agreed by the plants and farmers. The product-specific price support program has been notified to Members in the Notification on Domestic Support and Export Subsidies in Agriculture. As such, the substance and form of the measures would be more appropriately put in the area of agricultural domestic support under the section on agricultural policy.

- The minimum prices apply only to purchases of domestically produced cotton and not to imported cotton.
- No. Viet Nam's trading enterprises which receive interest rate subsidies to encourage purchases from domestic producers are neither required nor encouraged to purchase imported pork, sugar and rice at the same price at which they are encouraged to purchase domestic like products.
- The minimum prices apply only to purchases of domestic sugarcane for which refineries have signed contracts with farmers in order to protect the latter's interests. Sugar refineries are not required to purchase either domestic or imported raw sugar at a minimum price.
- Purchasers of refined sugar are not required to purchase either domestic or imported refined sugar at a minimum price.
- Questions concerning tariff rate quota on imported salt: No, industrial users of salt are not required to submit information about their actual or proposed purchase prices for domestic or imported salt with their applications for tariff quota allocations. The decisive factor in determining the allocation of tariff quota of salt to an enterprise is the demand for industrial salt to be used in the enterprise's production.

Question 36

We are also interested in clarification of any minimum prices applied to imported products or exported products, and the reflection of information on such measure in the report.

- **We refer to the system of import and export surcharges under the Price Stabilization Fund that was carried over into the Export Promotion Fund pursuant to Decision No. 195/1999/QD-TTg of 27 September 1999 (paragraph 97 of WT/ACC/SPEC/VNM/5). We would be grateful for details of the products subject to import and export surcharges, the levels of the surcharges currently applied and details of the internal or external target or reference price levels or ranges that are used to determine the level of the surcharge applied in each case.**
- **Could Viet Nam indicate whether minimum prices of any kind are applied to any imported products? If any are applied, we would appreciate details of all of the products subject to such prices, of the level of the minimum prices and of the manner in which they are applied.**
- **Could Viet Nam indicate whether minimum export sale price requirements are applied to any exported product? If any are applied, we would appreciate details of all of the products subject to such prices, of the level of the minimum prices and of the manner in which they are applied.**

Answer:

Currently, no administrative price in the form of minimum price is applied on any import or export.

Regarding import surcharge, Viet Nam would like to confirm that all import surcharges have been completely eliminated since December 2004 and Viet Nam commits to bind ODCs at zero upon accession.

Regarding export surcharge, Viet Nam now maintains only export surcharges on rubber latex and raw cashew nuts at 10 per cent. The rates of 10 per cent have been maintained since their introduction.

Question 37

We would appreciate details of the input price considerations involved in deciding the amount of freight subsidy provided to offset the cost of transportation of production inputs to low-income or resource poor producers in mountainous and remote regions.

We would appreciate information on the inputs that benefit from the freight subsidy; whether the level of freight subsidy for an input depends on its price prior to transportation; whether it is designed to achieve a target purchase price for the final user of the input; and who receives the subsidy.

Is the provision of a freight subsidy for an input dependent on whether the input is domestically produced or imported?

Answer:

The level of freight subsidy for certain agricultural inputs and materials (mainly fertilizer) does not depend on their prices prior to transportation.

The objective of the freight subsidy programme is to offset the differential in costs of transportation of agricultural inputs and materials from lowlands to mountainous and remote areas where underdeveloped infrastructures make transportation very difficult and costly. In addition, incomes of farmers living in such disadvantaged regions are rather low and production conditions are unfavourable.

Direct beneficiaries of freight subsidies are trading enterprises that are mandated to trade in the subsidized goods.

The provision of a freight subsidy for an input is not dependent on whether the input is domestically produced or imported.

Question 38

We thank Viet Nam for its agreement to remove the square brackets from the commitment to publish any changes to the list of goods and services subject to State price control in the Official Gazette (reply to Question 53 of WT/ACC/VNM/36). We request that the commitment paragraph (paragraph 56 of WT/ACC/SPEC/VNM/5) be provisionally amended to read:

The representative of Viet Nam confirmed that, from the date of accession, Viet Nam would apply price controls in a WTO-consistent fashion and take account of the interests of exporting WTO Members as provided for in Article III:9 of GATT 1994 and in Article VIII of the General Agreement on Trade in Services (GATS). He also confirmed that Viet Nam had published the list of goods and services subject to State price control and changes thereto in its Official Gazette and would continue to do so after accession. He confirmed moreover that pricing policy in Viet Nam would be applied in compliance with the provisions of Article III:4 and XI:1 of GATT 1994 and Article 4 of the Agriculture Agreement. The Working Party took note of these commitments.

Answer:

Viet Nam agrees to commit that price control measures would be consistent with WTO rules and any changes to the list of goods and services subject to State price control will be published on Official Gazette.

Viet Nam is willing to discuss commitment language on this issue with the Working Party.

III. FRAMEWORK FOR MAKING AND ENFORCING POLICIES

Question 39

Further to the reply to Question 67 of WT/ACC/VNM/36, we would appreciate further 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 revising its legal system in order to allow parties involved in administrative disputes to bring the administrative disputes before the court in case the settlement of the disputes through administrative proceedings has been unsatisfactory. The Law on Complaint and Denunciation (amended) and the Ordinance on the Amendments of and Supplements to some Articles of the Ordinance on Procedures for Settlement of Administrative Disputes are scheduled to be adopted in 2005.

Question 40

We would encourage Viet Nam to agree to the second paragraph of the proposed commitment set out in Question 75 of WT/ACC/VNM/36. We consider the implication of the reply to that question, that Viet Nam would only take action to abide by its future WTO obligations in the event of Dispute Settlement proceedings being taken against it, to be of concern.

We ask Viet Nam to reconsider its position in relation to this matter.

Answer:

Viet Nam does not imply that Viet Nam would only take action to abide by its future WTO obligations in the event of Dispute Settlement proceedings being taken against it. In our view, the first sentence of Viet Nam's reply to Question 75 of WT/ACC/VNM/36 has been adequate in ensuring the uniform application of WTO provisions throughout the Vietnamese customs territories.

IV. POLICIES AFFECTING TRADE IN GOODS

- Trading Rights

Question 41

We appreciate the further evolution that has taken place in Viet Nam's position on trading rights, apparent in Annex 2 of WT/ACC/VNM/36/Add.1. We are pleased to see that Viet Nam now does not include items that are unbound. We note that some tobacco products; petroleum; motion picture film; printed books, newspapers, brochures and leaflets; printing machines; records, tapes and other recorded media, are to be subject to State Trading Enterprises.

We would appreciate clarification that this means that trading rights will only be available to State Trading Enterprises in these areas.

Answer:

Viet Nam's adjusted commitments on trading rights are listed in Annex 1. For the products subject to State Trading Enterprises, exclusive rights are granted or designated to certain enterprises to serve the purpose of the State Trading mechanism.

Question 42

We would consider the trading rights reservations proposed by Viet Nam in relation to State Trading Enterprises and the Tariff Rate Quota administration method in Table 1 of Annex 2 to be inconsistent with paragraph 6 of Annex 2.

Could Viet Nam confirm that reservations proposed in Table 1 in relation to State Trading Enterprises and the Tariff Rate Quota administration method would preclude:

- (a) **the maintenance of any State Trading Enterprise in relation to any product, other than the products in Table 1 against which the term "STR" is inscribed?**
- (b) **the application of any Tariff Rate Quota administration method that would restrict the eligibility of any particular legal or natural person, domestic or foreign, to receive import licenses for allocations, except in relation to the product in the Table 1 against which the term "TRQ" is inscribed?**

If Viet Nam wishes to pursue its scheduling approach that would include reservations for trading rights restrictions in relation to State Trading Enterprises and/or Tariff Rate Quota administration methods, then we would expect that paragraph 6 of Annex 2 would be deleted.

Answer:

Viet Nam's adjusted commitments on trading rights are listed in Annex 1.

Question 43

We note with particular interest that Annex 2 of WT/ACC/VNM/36/Add.1 includes a reservation on the right to trade in relation to the TRQ administration method for only one TRQ product, un-manufactured tobacco of Heading 24.01.

Does this mean that tariff quota under the proposed bound tariff rate quotas for sugar and salt would be allocated to any legal or natural person, domestic or foreign, that seeks an allocation within the bounds of the tariff quota volume, and only through the first-come-first-served method (including through the issuance of import licenses on a first-come-first-served basis)?

Answer:

Viet Nam's adjusted commitments on trading rights are listed in Annex 1.

For products that are subject to TRQs, no further trading rights reservations are made as long as the respective TRQ administration mechanism is accepted.

Viet Nam shall only apply TRQ on sugar as from the date of accession in accordance with Viet Nam's Offer on TRQs.

As for salt, according to the Circular No. 10/2004/TT-BTM dated 27 December 2004 and the Circular No. 04/2005/TT-BTM dated 24 March 2005 of the Ministry of Trade, traders having demand for salt to use in their production are allocated TRQ by the Ministry of Trade upon submitting certification by line-management ministries. In principle, the allocation of TRQ on salt is through first-come-first-served method.

Question 44

We note that trading rights for certain goods (including wine and sugar) are still not to commence until 2010, and that it is still only from 1 January 2009, that 100 per cent foreign directly invested enterprises will be allowed to engage in import and export activities. The restrictions to the right to trade are inconsistent with WTO requirements, including Articles XI:1 and III:4 of GATT 1994.

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's adjusted commitments on trading rights are listed in Annex 1.

Question 45

We note Viet Nam's adjusted commitments on trading rights set out in Annex 2 to WT/ACC/VNM/36. However, these do not change the situation as regards the concerns expressed in Question 76: trading rights in a great number of products will only be liberalised in 2010, and 100 per cent foreign directly invested enterprises will only be granted full trading rights on 1 January 2009.

We welcome Viet Nam's announcement in the informal meeting of the Working Party of 20 May 2005 to continue to expand trading rights for foreign enterprises and individuals. We urge Viet Nam to equalise the treatment of foreign and domestic enterprises as regards trading right upon accession as regards all products allowed to be imported to or exported from Viet Nam. In terms of commitment language, we agree to the suggestion of another Member as referred to in Question 76.

Answer:

Viet Nam's adjusted commitments on trading rights are listed in Annex 1.

Question 46

On trading rights, we wish to reiterate our position that Viet Nam 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 an legal or natural person, domestic or foreign, having the right to engage in distribution in Viet Nam's market.

Answer:

Viet Nam's adjusted commitments on trading rights are listed in Annex 1.

Question 47

We request that Viet Nam use the summer to gather and compile its trade data at the HS 8-digit level. We hope Viet Nam could present the Working Party this information prior to the next Working Party.

Answer:

Due to the weakness of the data collection and coding system of Viet Nam's Customs prior to 2004, trade data at HS 8 digit of Viet Nam was insufficient and inaccurate.

Viet Nam has made its best efforts to compile the import-export data of the year 2003 (which is the latest trade data available) at the HS 6-digit level to submit to the Working Party (document WT/ACC/SPEC/VNM/1/Rev.3/Add.3). Nevertheless, due to its time and resource restraints, the section of commodity description is only available in Vietnamese. Viet Nam seeks for the understanding of the Working Party's Members regarding technical and infrastructure difficulties in information and statistical system at its Customs offices and looks forward to the latter's assistance to be able to overcome these difficulties in a near future.

A. IMPORT REGULATIONS

- Ordinary customs duties

Question 48

We appreciate the explanation on statutory MFN tariff ceilings given in response to Question 93 of WT/ACC/VNM/36.

Is Viet Nam willing to align its statutory MFN tariff ceilings with the bound MFN rates of duty in its Schedule of Concessions and Commitments for Goods upon accession to the WTO?

Answer:

On the basis of explanation in the answer to Question 93 of WT/ACC/VNM/36 on statutory ceiling rates, after the accession to WTO, in conducting its tariff policy, the Government of Viet Nam will abide by its commitments and rules of WTO, including its tariff commitments and rules applicable to application of import duties in special cases. In addition, the statutory ceiling rates set by the National Assembly's Standing Committee continues to serve as domestic legal basis and would not be in conflict with WTO's rules. Therefore, Viet Nam does not intend to align its statutory tariff ceiling with the bound rates of duty in its Schedule of Concessions and Commitments in Goods upon accession.

Question 49

We note Viet Nam's response to Question 94 of WT/ACC/VNM/36 that all legal documents are subject to publication in the Official Gazette and would generally come into effect 15 days from publication. We hope this means Viet Nam will be in a position to undertake the commitment to publish rates prior to application.

We would appreciate confirmation of this point, and the inclusion in the report of the amendment to paragraph of WT/ACC/SPEC/VNM/5 proposed in Question 94 of WT/ACC/VNM/36.

Answer:

Viet Nam commits to implement fully the obligations under Article X.2 of GATT 1994 on the basis of the implementation of the Law on Promulgation of Legal Normative Documents which requires all legal enactments, including those on tariff rate changes, to be published on the Official Gazette and would generally take effect in 15 days from the date of publication. Viet Nam reaffirms its commitment to make such tariff changes public prior to application in accordance with Article X.2 of GATT 1994. Accordingly, paragraph 93 of WT/ACC/SPEC/VNM/5 should be rewritten "...Viet Nam would officially publish any tariff changes required by the provision of Article X.2 GATT 1994 and ..."

Question 50

We are encouraged that Viet Nam is intending to limit the number of tariff lines subject to compound/combined specific duties (reply to Question 95 of WT/ACC/VNM/36).

We continue to urge Viet Nam to ensure that it binds its tariffs in the form in which it intends to apply them. We would have considerable difficulty with claims to any procedure that could necessitate frequent recourse to GATT Article XXVIII procedures, and even greater difficulty with claims to a post-accession arrangement that would by-pass GATT Article XXVIII entirely. Viet Nam should adopt and implement its tariff commitments with a view ensuring predictable and secure access to its markets.

Answer:

Viet Nam takes note of this proposal and reaffirms that Viet Nam, on the one hand, tries to limit the number of tariff lines subject to specific or combined/compound duties, while, on the other hand, taking into consideration fuller perspectives of the implementation of tariff commitments with a view to better ensuring the form of application would be consistent with the form at the time of binding.

Question 51

We would propose that the following text be added at the end of this section:

Viet Nam's commitments on bound tariffs are contained in the Schedule of Concessions and Commitments on Goods (document WT/ACC/VNM/[...]) annexed to Viet Nam's draft Protocol of Accession to the WTO.

Answer:

Viet Nam agrees to put the proposed paragraph in the Draft Report.

- **Other duties and charges**

Question 52

We note that, upon the elimination of the Price Stabilization Fund, the import and export surcharges applied under the Price Stabilization Fund had been carried over into the Export

Promotion Fund pursuant to Decision No. 195/1999/QD-TTg of 27 September 1999 (paragraph 97 of WT/ACC/SPEC/VNM/5).

We would be grateful if Viet Nam could provide details of all import and export surcharges, charges, levies or fees (other than ordinary customs duties) that are currently applied, whether pursuant to Decision No. 195/1999/QD-TTg of 27 September 1999 or any other legal instrument, and whether applied under the Export Promotion Fund or any other government program. Such details should indicate the tariff lines to which the products fall, the nature of the measures, the purpose of the measures and their legal basis.

We would be grateful if Viet Nam could indicate the steps that it will take to eliminate these measures and the programs under which they are applied (including the Export Promotion Fund and any other program) by the date of its accession to the WTO.

Answer:

Regarding import surcharge, Viet Nam confirms that all import surcharges have been eliminated since December 2004 and Viet Nam commits to bind its ODCs at zero upon accession.

Regarding export surcharges, Viet Nam now maintain only export surcharges on rubber latex and raw cashew nuts at 10 per cent. In Viet Nam's view, this is not inconsistent with WTO regulation.

Regarding fees and charges for services rendered, Viet Nam has listed in the same section in paragraph 106 of WT/ACC/SPEC/VNM/5 and levels of specific fees and charges appeared in Tables 14(a) and (b).

Regarding the Export Promotion Fund, Viet Nam has committed to eliminate all prohibited export subsidies in the form of direct payments for exports upon accession.

Question 53

We refer to measures described in paragraphs 98 and 99 of WT/ACC/SPEC/VNM/5.

We would be grateful for details of the program under which these measures are applied and their legal basis.

We would be grateful if Viet Nam could indicate the steps that will be taken to eliminate these measures and the programs under which they are applied by the date of its accession to the WTO.

Answer:

ODCs mentioned in paragraph 98 and 99 of WT/ACC/SPEC/VNM/5 have been eliminated. The last 2 ODCs on welded steel and PVC were removed in December 2004. Viet Nam would like to update these developments at the end of paragraph 99 of WT/ACC/SPEC/VNM/5. In addition, Viet Nam commits to bind ODCs at zero upon accession.

Question 54

We welcome the indications that Viet Nam has provided of its willingness to bind at zero other duties and charges within the meaning of Article II:1(b) of GATT 1994 (replies to Questions 99 and 100 of WT/ACC/VNM/36 refer). We seek Viet Nam's agreement to the following commitment language to replace paragraph 101 of WT/ACC/SPEC/VNM/5:

The representative of Viet Nam recalled that Viet Nam had bound all tariffs in its Schedule of Concessions and Commitments for Goods. He confirmed that Viet Nam would from the date of its accession to the WTO not apply other duties and charges within the meaning of Article II:1(b) of GATT 1994 and would bind such other duties and charges at zero in relation to all products included in its Schedule of Concessions and Commitments for Goods. He confirmed that all measures and programs of the kind described in paragraphs [97] to [99] above would be eliminated no later than the date of Viet Nam's accession and that after accession measures of this kind would not be reapplied or introduced. The Working Party took note of these commitments.

Answer:

Viet Nam appreciates the proposed commitment language on this issue. Viet Nam has agreed with the same commitment language in response to Question 99 of WT/ACC/VNM/36:

"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."

Question 55

We appreciate Viet Nam's acceptance of the proposed commitment language for the section on Other Duties and Charges.

Answer:

We thank you for the comment.

- **Tariff rate quotas, tariff exemptions**

Question 56

We are pleased that Viet Nam is prepared to make a commitment to allocate and administer tariff rate quotas in full conformity with WTO rules (reply to Question 103 of WT/ACC/VNM/36). Pursuant to outcomes of market access negotiations, we will be seeking to link such a general commitment to commitments on a range of specific matters relating to allocation and other tariff quota administration, and remain interested in further discussions of paragraphs 103A, 103B and 103C proposed in Question 110 of WT/ACC/VNM/36. Such commitments will be required to make effective access under any commitments that may be included in Part I Section IB of Viet Nam's Schedule of Concessions and Commitments for Goods.

As a prelude to further work, we reiterate our requests for the insertion into the report of (1) the additional sentence to paragraph 102 of WT/ACC/SPEC/VNM/5 proposed in Question

103 of WT/ACC/VNM/36, and (2) of paragraphs 103A, 103B and 103C proposed in Question 110 of WT/ACC/VNM/36.

Answer:

Concerning paragraph 102, Viet Nam commits that the allocation and administration of tariff rate quotas will be in full conformity with the WTO applicable rules and agrees to make detailed commitment on tariff rate quotas administration according to the outcomes of its accession negotiations.

Concerning paragraph 103, Viet Nam already accepted to add sub-paragraph 103.C. As for the remaining sub-paragraphs 103.A and 103.B, Viet Nam also explained in details the consistency of the applied TRQ with WTO provisions.

Question 57

In-quota and out-of-quota tariffs are concessions made by the parties to the WTO Agreement, as specified in GATT 1994 Article II.

Tariffs are "conceded" by a Contracting Party to the other Contracting Parties. Therefore, they are obligations for the Contracting Party to which the Schedule belongs and rights for the other Parties that integrate the system. TRQ allocation or administration systems should not alter the rights and obligations set out in the WTO context. Those systems should meet the following requisites:

- (i) To preserve the Contracting Parties' rights;**
- (ii) To be oriented towards the market rules and laws;**
- (iii) Not to be discriminatory;**
- (iv) Not to be arbitrary; and**
- (v) Not to distort the market rules.**

The Auctioning System: It is inconsistent with the WTO Agreements since they determine that the parties should give up the profit margin that correspond to them as a right and that their products should be valued at prices inferior to those offered by a market not distorted by the auctioning method. In fact, the actual access price is not the one offered for the entry but the one resulting from the corresponding in-quota tariff plus the profit margin given up by the offering party.

The auctioning system causes an income displacement towards importers, distorting the real exercise of the freedom to contract and of the free market that exporters enjoy in entering into contracts with importers.

The "Obligated Party" Administration System: No matter how arbitrary the system is, the party that concedes the tariff cannot become the party that decides how many or to whom tariff quotas should be assigned. As the right corresponds to the rest of the contracting parties and not to the party offering the concession, if the system is administered and conditioned in a different way to the way in which the obliged party does so in the market, the system diminishes or undermines the rights of the members.

The parties that bound themselves to set a tariff should refrain as much as possible from influencing the use of market access entitlements.

Answer:

Viet Nam has submitted its revised Offer on TRQs, through WT/ACC/SPEC/VNM/1/Rev.3/Add.4, where the administration of TRQs for certain items has been revised.

The commitments in Viet Nam's Offer on TRQs, after the conclusion of Viet Nam's accession negotiations, will be part of the commitment package. With regard to the allocation and administration of tariff rate quotas, Viet Nam already committed to abide by all WTO applicable rules.

Question 58

We appreciate the replies to Questions 104 and 106 of WT/ACC/VNM/36.

The factual information in the section of the report on Tariff Quotas will need to be updated to take account of Decision No. 46/2005/QD-TTg of 3 March 2005 and any other recent laws and legal acts in this area.

We would ask Viet Nam to indicate in the report the tariff quotas that are now (i) currently applied and (ii) currently proposed to be bound under the WTO.

We would also be grateful if Viet Nam could provide details of the annual quota volumes, the in-quota and out-of-quota rates, and the methods for allocating quota and administering the arrangements currently applied.

Answer:

Viet Nam takes note of the above comments and will work with the Members of the Working Party and the Secretariat to revise the Draft Report of the Working Party accordingly.

For detailed information relating to tariff rate quotas (quota volume, in-quota and out-quota rates, allocation and administration methods), please refer to the revised Offer on TRQs through WT/ACC/SPEC/VNM/1/Rev.3/Add.4.

Question 59

We appreciate the response provided to Question 105 of WT/ACC/VNM/36. However, we would note that Viet Nam had started its accession negotiations without any tariff rate quotas and had begun to apply such arrangements on a trial basis only last year, some time after market access negotiations had commenced.

Answer:

Since starting its accession, Viet Nam has made its best efforts to eliminate the import quantitative restrictions. Viet Nam has committed to eliminate all quantitative restrictions upon accession and to limit the number of items subject to the proposed tariff rate quotas. Therefore, Viet Nam looks forward to WTO Members' reciprocal flexibilities on this matter in the negotiation process.

Question 60

In the reply provided to Question 107 of WT/ACC/VNM/36, Viet Nam states that the discretionary import licensing regime applying to sugar will be converted to a TRQ upon accession to the WTO.

We seek further information on the administrative arrangements that Viet Nam intends to apply to a TRQ on sugar.

Answer:

The administrative arrangements for tariff rate quota on sugar shall be in accordance with Viet Nam's Offer on TRQs. Viet Nam has also committed that such arrangements will be in full conformity with the WTO applicable rules.

Question 61

We refer to Viet Nam's proposals for the use of additional quotas where they are used to manufacture for export, and understand that its intention may be to create duty drawback arrangements. We would have no objection to Viet Nam using duty drawback in relation to any product. However, the volumes of products that enter its territory under a duty drawback arrangement should not be considered as part of, or be linked to, any tariff rate quota arrangement.

We would be interested in details of Viet Nam's plans in relation to duty drawback.

Answer:

Regulations on duty drawback for imported materials used to manufacture for exports had been in place well before the introduction of tariff rate quotas regime. The use of additional tariff rate quotas for imported materials used for export manufacture does not make any changes to the previous duty drawback system. It allows duty drawback on the amount of imported materials used for export manufacture when traders apply for an allocation of additional tariff rate quota volume.

As a result, this regulation on additional quotas for imported materials used for export manufacture only has only administrative nature *per se*. Traders may choose either to apply for allocation of additional tariff rate quotas or simply proceed to import without seeking for an allocation of additional tariff rate quotas and enjoy drawback as normal in either options according to existing regulations.

Viet Nam has not planned any changes to the current duty drawback regime.

Question 62

We thank Viet Nam for the information provided in the reply to Question 108 of WT/ACC/VNM/36 on the TRQ allocation mechanism for salt. There are some details of the information that is fed into the allocation process. However, we are unclear as to how this information is used to determine allocations.

We would appreciate details of the criteria the line-ministry uses when assessing an application made by traders to import salt for use in production.

We would also be grateful for clarification:

- **on whether tariff quota allocations are made to intending industrial users of salt for human consumption, and whether this will also be the case under the proposed bound tariff rate quota for this product;**
- **on whether salt for human consumption can enter Viet Nam only under the tariff rate quota for salt.**

Answer:

The line ministries certify if the trader applying for TRQs on salt is the genuine user of industrial salt. The criteria that line ministries use in assessing an application made by traders to import salt for use in production include production capacity and type of materials used.

The Ministry of Trade does not allocate tariff rate quotas on salt to manufacturer of salt for human consumption. Traders receiving allocations of tariff rate quotas on salt are obliged to use such allocations for the industrial purpose as specified.

Salt for human consumption can be freely imported into Viet Nam to meet the domestic demand and is subject to out of quota rate.

Question 63

If tariff quota allocations are not available to intending industrial users of salt for human consumption, then we would expect that all salt for human consumption will be excluded from the proposed bound tariff quota for salt and be subject to a separate tariff-only commitment.

Answer:

We look forward to working with Members of the Working Party to revise the TRQ on salt so that it can best reflect our intention in applying this TRQ as well as Members' interests.

Question 64

Bearing in mind that salt was not included in Table 1 of Annex 2 of WT/ACC/VNM/36/Add.1, we would appreciate confirmation from Viet Nam that there will be no restrictions on the right of any legal or natural person, domestic or foreign, to import or export salt, whether or not for human consumption, and that any importer of this product will have the right to freely sell the quantities that it imports to any domestic user or distributor.

Answer:

The administration is only applied to in-quota importation of salt. Otherwise, appropriately registered traders can import and export salt.

Question 65

We thank Viet Nam for the information provided in the reply to Question 109 of WT/ACC/VNM/36. We would appreciate information on the role played by the customs authorities (constituted, we understand, under the Ministry of Finance) in administering the tariff rate quota for salt.

Do the customs authorities, for example, provide import data, including for imports that enter under the tariff rate quota, in relation to this product to the Ministry of Trade and the Ministry of Agriculture and Rural Development (MARD)?

If such data is not provided by the customs authorities to other parts of the government, or if there are lengthy delays in its provision, how will tariff quota fill be monitored so that reallocation of unused licenses may occur in a timely manner?

Answer:

The General Department of Customs is responsible for providing the Ministry of Trade and the Ministry of Agriculture and Rural Development with statistics on the importation of salt. However, there are delays in the provision of such statistics. As a result, the Ministry of Trade would also use the data from enterprises' reports.

Question 66

Further to the reply to Question 109 of WT/ACC/VNM/36, we would appreciate information on how MARD determines the annual import TRQ volumes for salt.

What measures will MARD, the Ministry of Trade and the customs authorities take to ensure that any TRQ volumes will be filled in any year?

We have seen recent reports of plans by MARD for Viet Nam to be fully self-sufficient in salt by 2010, when imports of this product are expected to be reduced to zero. We seek clarification as to whether these reports are correct.

Answer:

Based on the domestic demand for salt and production capacity, the Ministry of Trade, the Ministry of Agriculture and Rural Development, and the Ministry of Industry jointly decide the total annual volume of tariff rate quota for salt. This decision is taken on the basis of production output, demand for salt as material for manufacturing or processing industries, production capacity of manufacturing or processing businesses, and the fulfilment of tariff rate quota on salt in the preceding year.

Enterprises having demand for industrial salt to use in their production lodge their applications for allocations of tariff rate quota on salt to the Ministry of Trade. The Ministry of Trade shall be responsible for TRQ allocations.

The Vietnamese Government has approved the master plan for development of salt industry to 2010 which laid out forecast for the industry. Salt production, however, is also dependent on other factors such as the weather conditions for the year.

Question 67

Further to the reply to Question 109 of WT/ACC/VNM/36, we appreciate the information provided on the role of the Viet Nam Salt Corporation in the distribution of salt in Viet Nam. However, we would also appreciate information on the role of the Viet Nam Salt Corporation in the production of salt in Viet Nam.

We have seen reports that the Viet Nam Salt Corporation – a state-owned enterprise – accounts for most of the salt produced in Viet Nam. What percentage of the salt produced in Viet Nam is produced by the Viet Nam Salt Corporation?

What percentages of the salt produced and the salt distributed by the Viet Nam Salt Corporation are accounted for by salt for human consumption?

We would appreciate clarification as to whether the Viet Nam Salt Corporation will continue to receive, after accession, allocations of tariff quota for salt.

Answer:

The function of the Viet Nam General Corporation include: (1) purchasing salt from salt farmers; (2) producing different types of salts (purified salt, refined salt, iodized salt); (3) ensuring the National Stock (public stockholding) of salt. The General Corporation of Salt has ten member enterprises specialized in salt production and trade.

Most of salt production is undertaken by farmers. Annual salt output of the General Corporation of Salt as a whole, inclusive of its member enterprises' own production and joint production, accounts for about 15-20 per cent of the domestic salt production.

The General Corporation of Salt annually purchases between 30-40 per cent of the national output. Its annual production is about 30 per cent of refined salt and iodized salt to satisfy the demand of domestic market, and also the quantities to ensure the National Stock. The rest of domestic salt output is purchased by other non-State-owned entities and a small portion is consumed by salt farmers (salt producers) themselves.

Most of the salt volume purchased by the General Corporation of Salt from salt farmers are supplied as material to its 32 salt producing mills (many of them have been equitized) and to mountainous provinces for producing iodized salt for human consumption within the framework of the National Priority Programme.

The Viet Nam General Corporation of Salt and its member enterprises also possess some capacity to produce salt as materials for other industries. Therefore, it is also eligible for applying salt quota allocations to use in its production.

Question 68

We appreciate advice provided that the Viet Nam Salt Corporation is a recipient of tariff quota allocations as a distributor of salt.

We note that Viet Nam proposes that tariff quota allocations will be available only to industrial users of salt, and seek clarification as to whether the Viet Nam Salt Corporation is classified as an industrial user of salt.

Answer:

The function of the Viet Nam General Corporation include: (1) purchasing salt from salt farmers; (2) producing different types of salts (purified salt, refined salt, iodized salt); (3) ensuring the National Stock (public stockholding) of salt. The General Corporation of Salt has ten member enterprises specialized in salt production and trade.

Most of salt production is undertaken by farmers. Annual salt output of the General Corporation of Salt as a whole, inclusive of its member enterprises' own production and joint production, accounts for about 15-20 per cent of the domestic salt production.

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The Viet Nam General Corporation of Salt and its member enterprises also possess some capacity to produce salt as materials for other industries. Therefore, it is also eligible for applying salt quota allocations to use in its production.

- **Fees and charges for services rendered**

Question 69

We would support the inclusion of the language for this section of the report proposed in Question 126 of WT/ACC/VNM/36, and we would encourage Viet Nam to accept the proposed commitment and adjust its fees accordingly.

Answer:

Regarding customs fees, Viet Nam have ceiling rates for each import clearance and Viet Nam is now in consideration of further reduction to customs fees. Thus, Viet Nam believes that its regulations on customs fees are not inconsistent with Article VIII of GATT. Viet Nam is willing to discuss with interested Members to clarify on this and willing to work on the detailed commitment language.

Question 70

Viet Nam applies a customs fee for the purchase or sale of foreign exchange which varies according to the value of the transfer. We appreciate the clarifications given by Viet Nam, but note that they do not alleviate our concerns as regards the compatibility of the fee with Article VIII GATT since the level of the fee depends on the value of the transfer. The fee should be eliminated or revised to meet the criteria of Article VIII.

Answer:

Regarding customs fees, Viet Nam have ceiling rates for each import clearance and Viet Nam is now in consideration of further reduction to customs fees. Thus, Viet Nam believes that its regulations on customs fees are not inconsistent with Article VIII of GATT. Viet Nam is willing to discuss with interested Members to clarify on this and willing to work on the detailed commitment language.

Question 71

We note that customs processing fees are based on the quantity of imports, by weight and form of transportation. We appreciate the clarifications given by Viet Nam, but note that they do not alleviate our concerns as regards the compatibility of the fees with Article VIII GATT. The fees should be modified to correspond to the cost of services rendered.

A commitment paragraph should be added after this section, covering fees and charges for services rendered. We agree with the language proposed by another Member under Question 126 of WT/ACC/VNM/36.

Answer:

Regarding customs fees, Viet Nam have ceiling rates for each import clearance and Viet Nam is now in consideration of further reduction to customs fees. Thus, Viet Nam believes that its regulations on customs fees are not inconsistent with Article VIII of GATT. Viet Nam is willing to discuss with interested Members to clarify on this and willing to work on the detailed commitment language.

Question 72

With respect to the section on Fees and Charges for Services Rendered, we reiterate our position that Viet Nam's fee for the importation of foreign exchange is inconsistent with Article VIII of the GATT. It should be eliminated or revised to meet the criteria in Article VIII.

Answer:

Regarding customs fees, Viet Nam have ceiling rates for each import clearance and Viet Nam is now in consideration of further reduction to customs fees. Thus, Viet Nam believes that its regulations on customs fees are not inconsistent with Article VIII of GATT. Viet Nam is willing to discuss with interested Members to clarify on this and willing to work on the detailed commitment language.

- **Application of internal taxes to imports**

Question 73

We would encourage Viet Nam to indicate the steps that it will take to integrate producers of unprocessed and raw agricultural products into its VAT system (reply to Question 128 of WT/ACC/VNM/36 and paragraph 118 of WT/ACC/SPEC/VNM/5 refer). The VAT exemption involved would not seem to meet WTO national treatment requirements in relation to competing imported products that are subject to VAT. We appreciate the problem in relation to small scale producers and recognise that such steps may take time.

Answer:

The VAT law of Viet Nam provides that domestic unprocessed and semi-processed agri-products are not subject to VAT. This provision results from the fact that a lot of small scale households doing farm work sell their products without invoices and the administrative capacity of Viet Nam in this area is still weak and incapable of the inclusion of these products into VAT scope. This provision is not to discriminate between domestic products and imports which would be inconsistent with Article III of GATT 1994. In addition, unprocessed and semi-processed agri-products will be subject to VAT on the whole values in the next phase of VAT taxation. Thus, the products are actually taxed by VAT.

Viet Nam highly appreciates the WTO Members' understanding on its current difficulties in including this group of products into VAT scope. Viet Nam would like to receive technical assistance from the Working Party in this issue.

Question 74

We would be grateful for an indication of whether VAT is rebated on the purchases made by producers of unprocessed and raw agricultural products.

Answer:

Article 16 of the Law on VAT provided that VAT refund would be made to only producers subject to VAT. Because unprocessed and semi-process agricultural products are not subject to VAT, their producers would not be refunded for VAT on their inputs.

Question 75

We appreciate the recent announcement of plans to equalise rates of excise for "draught beer" and "draft beer" by the date of accession.

We ask that relevant details of this welcome step be included in the report.

Answer:

Viet Nam commits to have a uniform rate of excise tax on draught and draft beer upon accession and agrees to put this into commitment language in the Draft Report.

Question 76

Regarding to Question 127 of WT/ACC/VNM/36, we welcome the announcement of Viet Nam at the informal meeting of the Working Party of 20 May 2005, that Viet Nam will apply uniform tax rates for imported and domestically produced automobiles upon accession.

Answer:

We thank you for the comment.

Question 77

Regarding to Question 132 of WT/ACC/VNM/36, we welcome the announcement of Viet Nam at the informal meeting of the Working Party of 20 May 2005, that Viet Nam will apply uniform tax rates for draft and draught beer upon accession.

A commitment paragraph should be added after this section, covering excise taxes and VAT. We agree with the language proposed by another Member under Question 135.

Answer:

Viet Nam commits to have a uniform rate of excise tax on draught and draft beer upon accession and agrees to put this into commitment language in the Draft Report.

Question 78

We again request that Viet Nam commit to eliminate its discriminatory excise taxes on automobiles and beer by the date of accession.

Answer:

Viet Nam commits to have uniform rates of excise tax on automobiles and beer upon accession.

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

Question 79

We would suggest that the provision of the single comprehensive list of non-tariff measures requested in Question 157 of WT/ACC/VNM/36 would facilitate work in this area of Viet Nam's foreign trade regime. The replies provided to Questions 136 to 159 of WT/ACC/VNM/36 are appreciated; however, further information would be helpful.

We would encourage Viet Nam to clarify and notify in a comprehensive listing, *inter alia*:

- the specific measures used under line management referred to in Table 6 of WT/ACC/SPEC/VNM/5 (as requested in Questions 136 and 147), with additional relevant details to complete the tabulation;
- all discretionary licensing used (e.g., Questions 140 and 150);
- import licensing requirements to be notified as measures (as requested in Question 144), whether automatic within the meaning of Articles 1 and 2 of the Agreement on Import Licensing Procedures or non-automatic;
- all quantitative restrictions listed in Table 4(b) of WT/ACC/SPEC/VNM/5 (referred to in Question 146) and other tables in WT/ACC/SPEC/VNM/5, with appropriate information on status of elimination and other details to complete the tabulation;
- all non-tariff measures of the kind applied in conjunction with the administration of tariff quotas (referred to in Question 151);
- all non-tariff measures referred to in Questions 136 to 159 in respect of which information is needed to clarify product coverage, nature and rationale, legal basis and WTO justification or date of elimination; and
- all measures notified in tables referred to in the tirets under Question 157 of WT/ACC/VNM/36.

Answer:

Concerning the import quantitative restrictions: Table 4(b) of document WT/ACC/SPEC/VNM/5 has provided comprehensive information as requested. However, it should be noted that except for sugar, all other import restrictions have been eliminated. Viet Nam has also committed to eliminate all import quantitative restrictions from the date of accession. As such, the only quantitative restriction being used for sugar shall be eliminated (a TRQ for sugar would instead be used) upon accession.

Concerning line-management: Please refer to Annex 2 attached herewith that provides further information about the existing line-management regime. Viet Nam commits to apply line-management in a WTO-consistent manner. Specifically, line-management shall not amount to quantitative restriction on imports.

Question 80

We appreciate the information that Decision No. 41/2005/QĐ-TTg of 2 March 2005 on promulgation of the Import Licensing Regulation is based on WTO rules and regulations, and that the Decisions will take effect from 1 September 2005 (reply to Question 136 of WT/ACC/VNM/36). We would appreciate more information on line management measures, particularly those to be retained after accession and the WTO justification for the retention of the measures. We would also appreciate more details on the licensing used, and whether the licenses are automatic or non-automatic within the meaning of the Agreement on Import Licensing.

Answer:

Please refer to Annex 2 attached herewith that provides further information about the existing line-management regime. Viet Nam commits to apply line-management in a WTO-consistent manner. Specifically, line-management shall not amount to quantitative restriction on imports.

Question 81

We thank Viet Nam for its commitment to apply its line management measures in conformity with WTO rules and regulations from the date of accession and understand that Annex 3 of WT/ACC/VNM/33 contains the list of goods subject to line management for the period 2001-2005 (reply to Question 147 of WT/ACC/VNM/36). As the list runs from 2001-2005, we would be interested to know whether there are plans for any changes to the list for the period from 2006 and the criteria for making changes to the list.

Answer:

Currently, Viet Nam is in preparation of a new line-management mechanism for post-2005 period. Such new mechanism is based on the principle that line management measures would not be quantitative restrictions on imports.

Question 82

We appreciate Viet Nam's commitment to eliminate the import prohibition on used motor-vehicles from the date of accession and to apply technical measures to used motor vehicles in compliance with the TBT Agreement.

Answer:

We thank you for the comment.

Question 83

We thank Viet Nam for its commitment to fully comply with the Agreement on Import Licensing. We look forward to seeing Viet Nam's detailed comparison between the provisions of Decision No. 41/2005/QD-TTg of 2 March 2005 on promulgation of the Import Licensing Regulation and the WTO Agreement on Import Licensing.

Answer:

The document on detailed comparison between the provisions of Decision No. 41/2005/QD-TTg of 2 March 2005 on promulgation of the Import Licensing Regulation and the WTO Agreement on Import Licensing Procedures was provided to the Working Party in the form of non-paper prior to the Informal Meeting on 20 May 2005. An unofficial English translation of the Decision No. 41/2005/QD-TTg is submitted to the Working Party through the document WT/ACC/VNM/38/Add.1.

Question 84

Regarding the replies to Questions 138, 139 and 141 of WT/ACC/VNM/36, we appreciate the explanations given by Viet Nam, but consider that application of export prohibitions as regards motor cycles of a cylinder capacity exceeding 175 cc, second hand consumer goods, used materials and equipment and children's toys is too restrictive of a measure to comply with WTO

provisions. Several of these articles are traded by domestic companies without restrictions. If there are concerns of health and safety, less restrictive technical requirements applicable to both domestic and imported products should be developed.

Answer:

Motorcycles with engine capacity exceeding 175cc: Viet Nam has regulations on eligible users (i.e. only to serve the police, armed forces and for sport competition). Viet Nam is prepared to discuss the conversion of import prohibition into non-automatic import licensing (licenses are only given to imports for use by the police, armed forces and for sport competition). No quantitative restrictions shall be applied to importation for such purposes.

While none of processing and disinfection facilities for used clothing before use has been set up in Viet Nam, import prohibition on second-hand clothing is considered the effective and necessary measure to protect public health against epidemics and the environment. Due to the low level of its management capability, import prohibition on second-hand consumer 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.

Viet Nam does not prohibit the importation of children's toys except for those having adverse effects on moral education and social security. Both the domestic production and trade of children's toys that have negative impacts on dignity education and social order and security are prohibited in Viet Nam.

Question 85

Regarding the reply to Question 141 of WT/ACC/VNM/36. we welcome Viet Nam's commitment to eliminate its import prohibition of used motor vehicles upon accession. However, we note that the quotas indicated in Annex 1 for three years are so small (progressively from 1,000 to 2,000 units), that their practical effect is not much greater than that of an export prohibition. We therefore urge Viet Nam to eliminate the import prohibition of used motor vehicles upon accession.

We propose that the commitment paragraph to this chapter should also cover other existing import prohibitions in addition to cigarettes and cigars.

Answer:

This quota is not small given the Viet Nam's current market size for passenger cars. More importantly, it is necessary in a very limited time so that Vietnamese authorities can develop and experience the use of technical standards and regulations on used motor vehicles for traffic safety and environment protection in compliance with WTO rules.

Question 86

We welcome the Non-Paper, distributed in the informal Working Party of 20 May 2005, setting out the main obligations of the WTO Agreement on Import Licensing Procedures and corresponding provisions in the new Prime Minister's Decision No. 41/2005. However, we have the following comments to make on the comparison:

- **Point 5 of the comparison Table**

Article 1.5 of the AILP requires that application forms should only require necessary information to be given. This requirement is not reflected in Article 3.2.b of the Prime Minister's decision.

- **Point 8 of the comparison Table**

Article 2.2.a of the AILP requires that automatic licensing procedures shall not be administered in such way as to have restrictive effects on imports. This requirement is not reflected in Article 3.1.a of the Prime Minister's decision.

- **Point 11 of the comparison Table**

Article 3.5 of the AILP requires that all necessary information on quotas, when existing, shall be given. This requirement is not reflected in Article 3.1.b of the Prime Minister's decision, which seems to refer only to procedural matters.

- **Point 14 of the comparison Table**

Article 3.5.i of the AILP requires that licenses are to be issued in "economic quantities". The wording "reasonable quantities and in accordance with business practices" in Article 5.8 of the Prime Minister's Decision does not correspond to this obligation.

We would request Viet Nam to bring the above mentioned points in compliance with the WTO Agreement on Import Licensing Procedures.

Answer:

The non-paper Comparison Table provided at the Informal Meeting of the Working Party on 20 May 2005 focused only on studying the comparability of main obligations of the WTO Agreement on Import Licensing Procedures (AILP) and corresponding provisions in the new Prime Minister's Decision No. 41/2005/QD-TTg. For further clarification, Viet Nam would like to address the Member's specific concerns as follows:

- **Point 5 of the Comparison Table:**

That "the application forms should only require necessary information to be given" can be understood as an echoing the wording "as simple as possible" in Article 1.5 of AILP.

In a spirit of "simplicity and explicitness", licensing authorities shall set forth the application forms for import licenses areas on the principle of maximum facilitation for businesses.

- **Point 8 of the comparison Table:**

The requirement "not aim to restrict import" has been prescribed in Article 2.4 (General Provisions). Please refer to the unofficial English translation of the Decision No. 41/2005/QD-TTg provided as an attachment to this document.

- **Point 11 of the comparison Table:**

Necessary information on quotas has been specified in Article 5.3 of the Decision No.41/2005/QD-TTg. Please refer to the unofficial English translation of the Decision No.41/2005/QD-TTg provided as an attachment to this document.

- Point 14 of the comparison Table:

This is merely a wording issue where the phrase "reasonable quantities and in accordance with business practices" stated in the Decision No. 41/2005/QĐ-TTg of Viet Nam corresponds to the "economic quantities" notion stated in the AILP and is to facilitate its internal implementation (as it is the closest Vietnamese translation for such English term).

Question 87

On import prohibitions, we appreciate Viet Nam's safety concerns, but prohibitions are too restrictive a measure for commonly traded goods like motorcycles, toys, and used articles listed in table 4(a) of the draft report. We reiterate our recommendation that Viet Nam adopt import licensing to regulate trade in these products, if there are health or safety concerns.

Answer:

Motorcycles with engine capacity exceeding 175cc: Viet Nam has regulations on eligible users (i.e. only to serve the police, armed forces and for sport competition). Viet Nam is prepared to discuss the conversion of import prohibition into non-automatic import licensing (licenses are only given to imports for use by the police, armed forces and for sport competition). No quantitative restrictions shall be applied to importation for such purposes.

While none of processing and disinfection facilities for used clothing before use has been set up in Viet Nam, import prohibition on second-hand clothing is considered the effective and necessary measure to protect public health against epidemics and the environment. Due to the low level of its management capability, import prohibition on second-hand consumer 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.

Viet Nam does not prohibit the importation of children's toys except for those having adverse effects on moral education and social security. Both the domestic production and trade of children's toys that have negative impacts on dignity education and social order and security are prohibited in Viet Nam.

Question 88

We reiterate our request that Viet Nam lift its ban on large motorcycle imports by accession.

Answer:

Motorcycles with engine capacity exceeding 175cc: Viet Nam has regulations on eligible users (i.e. only to serve the police, armed forces and for sport competition). Viet Nam is prepared to discuss the conversion of import prohibition into non-automatic import licensing (licenses are only given to imports for use by the police, armed forces and for sport competition). No quantitative restrictions shall be applied to importation for such purposes.

- **Customs valuation**

Question 89

We thank Viet Nam for its commitment to fully comply with the Customs Valuation Agreement from the date of accession, and look forward to discussing commitment language.

Answer:

Viet Nam commits to fully apply the Customs Valuation Agreement upon accession and Viet Nam is willing to discuss on the detailed commitment language.

Question 90

An analysis of WT/ACC/SPEC/VNM/5 and WT/ACC/VNM/36 raises the following Question for consideration:

Minimum prices (officially established minimum values)

Article 7.2(f) of the Customs Valuation Agreement stipulates that no customs value shall be determined on the basis of minimum customs values.

However, paragraph 2 of Annex III provides the possibility for developing countries which currently value goods on the basis of officially established minimum values to make a reservation to enable them to retain such values on a limited and transitional basis under such terms and conditions as may be agreed to by the Members.

Additionally, in the context of special and differential treatment, Article 20.1 of the Agreement allows developing country Members to make a reservation to delay application of its provisions for a period not exceeding five years from the date of entry into force of the Agreement for such Members.

Paragraph 136 of document WT/ACC/SPEC/VNM/5 of 22 November 2004 ("Draft Report of the Working Party on the Accession of Viet Nam") reads as follows: "[The representative of Viet Nam] acknowledged that several of the provisions of the Agreement had not yet been implemented in Viet Nam. However, Viet Nam's customs valuation system was being reformed to be brought into conformity with the Customs Valuation Agreement".

The following emerges from a comparative reading of the legislation and documents cited above:

According to the Customs Valuation Agreement, goods may not be valued on the basis of minimum prices, except where the reservation referred to in Article 7.2(f) cited above has been made, or, obviously, if the maximum period of five years since the developing country Member became eligible for special and differential treatment under Article 20.1 has not yet elapsed.

Answer:

Viet Nam commits to fully apply the Customs Valuation Agreement upon accession. This means that Viet Nam will not apply valuation by minimum prices upon accession. In addition, minimum prices have been abolished from September 2004.

Question 91

According to the WT/ACC/SPEC/VNM/5 and WT/ACC/VNM/36, Viet Nam would appear not to apply the deductive method regulated by Article 5 of the Agreement (whilst the last part of paragraph 143 of document WT/ACC/SPEC/VNM/5 apparently refers to the Article 5.1 method, i.e. the deductive method, the response to Question 161 in document WT/ACC/VNM/36 mentions the Article 5.2 method, i.e. the super deductive method). Nothing in the Agreement permits a developing country Member to cease applying this method; on the other hand,

application of the Article 6 method (computed value) may be delayed for a further period of three years following the application of all other provisions of the Agreement. Consequently, Viet Nam would be derogating from its obligations established under the Agreement if the period requested under the terms of Article 20.1 had already expired.

Answer:

Paragraph 43 of WT/ACC/SPEC/VNM/5 noted "Viet Nam had not been able to apply the computed value and deductive method (except for imported goods for processing)" which is a typo error. The paragraph should be read as follows: "Viet Nam had not been able to apply the computed value method (Article 6) and deductive method for imported goods for processing (Article 5.2)".

However, in the updated action plan to implement the Customs Valuation Agreement (WT/ACC/VNM/20/Rev.2) submitted to the 8th Working Party meeting, Viet Nam committed to implement these two methods in compliance with the Agreement at accession and Viet Nam will fully comply with the Customs Valuation Agreement upon accession.

Question 92

Option of appeal to a judicial authority

Article 11.2 lays down the obligation for the legislation of each Member to provide for a right of appeal to a judicial authority in regard to a value determination.

The response by the representative of Viet Nam to Question 162 in document WT/ACC/VNM/36 of 7 April 2005 ("Additional Questions and Replies") is that the National Assembly is expected in the course of 2005 to adopt new amendments to the Ordinance on Procedures for the Settlement of Administrative Disputes (their adoption by the National Assembly was scheduled for the fourth quarter of 2004, according to document WT/ACC/SPEC/VNM/5 of 22 November 2004 ("Draft Report of the Working Party on the Accession of Viet Nam")).

In this connection it should be noted that according to the aforementioned provision no Member implementing the Agreement may renege on the undertaking to ensure that its legislation provides for the party concerned to have right of appeal to a judicial authority.

Answer:

Viet Nam is revising and improving its legal documents, among which the Law on Complaint and Denunciation and the Ordinance on Procedures for Settlement of Administrative Disputes are planned to be amended in Quarter IV/2005 in order to allow parties to an administrative dispute, including disputes involved customs valuation in accordance with WTO Agreement on Customs Valuation, to bring their administrative disputes before the court to be settled in cases the settlement of the disputes through administrative proceedings has been unsatisfactory.

Question 93

Regarding Question 160 of WT/ACC/VNM/36, could Viet Nam explain the current state of play as regards the adoption of amendments to the Ordinance on Procedures for Settlement of Administrative Disputes?

Answer:

The 7th Draft of the Ordinance on the Amendments of and supplements to some Articles of the Ordinance on Procedures for Settlement of Administrative Disputes was submitted by the Supreme People's Court to the National Assembly Standing Committee for comments and recommendation on 28 June 2005. The Supreme People's Court and related agencies are now continuing to revise and finalize the Draft Ordinance on Procedures for Settlement of Administrative Disputes (amended) to submit it to the National Assembly Standing Committee for adoption in August 2005.

Question 94

Regarding the Question 13 of WT/ACC/VNM/35, could Viet Nam explain when will all the Interpretative Notes be incorporated in the legislation of Viet Nam.

Answer:

In fact, all Interpretative Notes have been incorporated into current relevant legal documents of Viet Nam.

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

Question 95

We are pleased that Viet Nam is prepared to make a commitment to apply safeguards, anti-dumping and countervailing measures in conformity with WTO rules upon accession.

Answer:

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

Question 96

Since the Ordinance only contains the main principles and basic concepts of anti-dumping procedures, we are at this stage not in a position to make detailed comments. Presumably further details will be laid down in implementing regulations and guidelines, in accordance with Article 29 of the Ordinance. We would therefore invite Viet Nam to provide us with these texts, when they are being drafted, and offer to provide more detailed comments in that context. Furthermore, we would strongly suggest that substantive and procedural provisions of any implementing rules be defined along the lines of the WTO ADA.

Important aspects of anti-dumping procedures which currently appear to be lacking in the Ordinance or would need to be further elaborated are, in particular: the rules on the determination of dumping (Articles 2.2.1 to 2.5 of the Anti-Dumping Agreement ('ADA')) and injury (Article 3.3 to 3.8 of the ADA); most of the rules on evidence (Article 6 ADA); some of the provisions on undertakings (parts of Articles 8.2, 8.4 and 8.5 ADA), on the imposition and collection of anti-dumping duties (most of Article 9 ADA), on retroactivity (parts of Articles 10.2 and 10.4 to 10.8 ADA); on reviews (Article 11.3 and part of Article 11.2 ADA), and on public notices (Article 12.1.1 to 12.3 ADA).

Regarding the basic concepts, as currently laid down in the Ordinance, some of them do not seem to be fully in line, or might even be in conflict with the ADA. Unless this is due to a translation problem, this would appear to be the case for, in particular the concepts of dumping

(Article 2.1 of the Ordinance), like product (Article 2.6 of the Ordinance) and injury (Article 2.7 of the Ordinance). Such concepts would need to be aligned with the ADA in order to ensure WTO compatibility.

Answer:

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

Pursuant to provisions set out in Article 29 of the Ordinance No. 20/2004/PL-UBTVQH11 dated 29 April 2004 Against Dumping of Imported Goods into Viet Nam (hereafter "the Ordinance on Anti-dumping"), the Decree providing Detailed Regulations and guidelines for the implementation of a Number of Provisions of the Ordinance on Antidumping ("the draft Decree") on the investigating Authority on Antidumping, and the Council for handling antidumping cases; procedures, matters to be investigated and the imposition of antidumping measures are being drafted so as to ensure the publicity, transparency in antidumping procedures and the compatibility to ADA rules.

Some aspects mentioned above are provided for in the draft Decree. In addition, it should be highlighted that Article 27 of the Ordinance on Antidumping provides that in instance of conflict between Vietnamese and relevant regulations set out in agreements or treaties that Viet Nam has signed or acceded, such agreements or treaties shall prevail.

Regarding the comment that some of the basic concepts, as currently laid down in the Ordinance on Antidumping, do not seem to be fully in line, or might even be in conflict with the ADA, it should be noted that for Viet Nam, antidumping issue is quite new and complicated, which covers numerous technical terms, therefore translated version might not necessarily be correct. The translation of provisions in question may be revised as follow:

"Article 2. Interpretation of terms

1. Anti-dumping duty shall be interpreted as an additional import duty imposed in instances where dumped goods imported into Viet Nam causes or threatens to cause material injury to domestic industry.
6. Like product shall be interpreted as a product is identical to the product being requested for imposition of antidumping measures in all respects, or in the absence of such a product, another product which has several characteristics closely resembling those of the product being requested for imposition of antidumping measures.
7. Material injury to domestic industry shall be interpreted as a situation of material depression or suppression with respect to output, price, sales, profits, production growth rate; employment, investment and other criteria of the domestic industry or a situation resulting in a retardation of the establishment of an industry."

Question 97

- (i) Article 2.4, 2.5 and 8.1: the definition of negligibility does not only refer to volumes but also to value of imported goods, which is contrary to the ADA. The same applies with regard to the definition of domestic industry in Art. 2.5 and 8.1 of the Ordinance.**
- (ii) Article 13: It should be clarified that facts available can only be used in the circumstances and under the conditions foreseen in Article 6.8 and Annex II ADA.**
- (iii) Article 17.2 and 18.2: The preliminary and final conclusion of an investigation should not only be announced to the parties concerned, but a public notice should also be made available in accordance with Article 12.2 ADA.**

- (iv) **Article 23.2: the conditions for the retroactive application of duties should be aligned with Article 10.6 ADA.**

Answer:

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

In addition, it should be highlighted that Article 27 of the Ordinance on Antidumping provides that in instance of conflict between Vietnamese and relevant regulations set out in agreements or treaties that Viet Nam signed or acceded, such agreements or treaties shall prevail.

- (i) Concerning terms provided in Article 2.5 of the Ordinance on Antidumping, Viet Nam believes that the conflict mentioned might have arisen from translation mistakes. Such translation should be revised as follows:

"Article 2. Interpretation of terms

5. The term "domestic industry" refers to the domestic producers as a whole or to those of them whose collective output, quantity or value of the like products constitutes a major proportion of the total domestic output, quantity or value of those products, provided that such producers have not imported or have no directly associated relationship to individuals, [or] organization exporting, [or] importing the product being requested for imposition of antidumping measures."

Article 8.1 of the Ordinance on Antidumping stipulates one of the two bases for initiating an investigation. This provision is in consistency with those of the ADA. However, in instance of conflict between Vietnamese and relevant regulations set out in agreements or treaties that Viet Nam has signed or acceded, such agreements or treaties shall prevail (Article 27 of the Ordinance on Antidumping).

- (ii) The draft Decree (Art. 22.5) specifies instances where facts available shall be used. The provision is elaborated with reference to Article 6.8 and the Annex II of the ADA, thus shall be interpreted in consistency with ADA rules.
- (iii) In addition to the obligation to notify parties concerned of the preliminary conclusion and final conclusion as provided in Article 17.2 and 18.2 of the Ordinance on Antidumping, the draft Decree specifies an obligation to publicize such conclusions (Article 31 and 33). Furthermore, public notification of other relevant information is emphasized throughout the draft Decree as to ensure the publicity, transparency in antidumping proceedings.
- (iv) Article 27 of the Ordinance on Antidumping provides that in instance of conflict between Vietnamese and relevant regulations set out in agreements or treaties that Viet Nam has signed or acceded, such agreements or treaties shall prevail.

Question 98

We appreciate your responses to our comments on your anti-dumping, countervailing duty, and safeguards ordinances. We look forward to reviewing the implementing regulations that we understand are being drafted.

Answer:

An unofficial English translation of the Decree No. 150/2003/ND-CP dated 8 December 2003 providing detailed guidelines for the implementation of the Ordinance No. 42/2002/PL-UBTVQH10 on Safeguards in Import of Foreign Goods into Viet Nam is provided with this document. The

English versions of the Decree providing detailed guidelines for the implementation of the Ordinance No. 22/2004/PL-UBTVQH11 dated 20 August 2004 on Measures Against Subsidized Goods imported into Viet Nam and of the Decree providing detailed guidelines for the implementation of the Ordinance No. 20/2004/PL-UBTVQH11 dated 29 April 2004 Against Dumping of Imported Goods into Viet Nam shall be submitted to the Working Party as soon as they are completed.

B. EXPORT REGULATIONS

- Export restrictions

Question 99

We would encourage Viet Nam 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 100

We seek clarification concerning reports that unprocessed minerals export contracts have been suspended. If this is the case, we would appreciate an explanation of the reasons for such a step.

Answer:

In the recent period, there has been an increase in the widespread illegal exploitation of solid minerals, causing serious mining accidents as safety measures are not applied. In order to cope with this situation, the Prime Minister has issued an Instruction. Item 2 of the Prime Minister's Instruction No. 10/2005/CT-TTg dated 5 April 2005 states as follows: "...Regarding the exportation of minerals: Mineral export contracts that have been legally signed and are being enforced in full compliance with the laws shall be permitted to continue exporting minerals in accordance with the provisions of the contracts. Signing new contracts to export raw solid minerals is temporarily suspended until new regulations are issued (except for special cases as decided by the Prime Minister)." Pursuant to the above Instruction, the signing of new contracts to export raw solid minerals is only temporarily suspended until the issuance of new regulations on conditions to export minerals to supersede the Circular No. 02/2001/TT-BCN dated 27 April 2001 guiding the export of minerals during the period of 2001-2005 in order to reorganize mineral exploitation activities for mining safety and environmental protection. New regulations are being prepared for issuance by the competent authorities. Enterprises that have signed mineral export contracts with lawfully exploited mineral sources are allowed to continue exporting as normal.

Question 101

We thank Viet Nam for information on rice exports, and would be grateful for clarification as to whether there are certain domestic volumes that have to be fulfilled before any rice can be exported.

Answer:

Viet Nam is a major rice-consuming country in the world. National food security is one of Viet Nam's most important targets to ensure socio-economic stability. Thus the Government of Viet Nam normally establishes the annual food target taking into account of domestic demand and food security

needs and then announces an indicative export volume of rice which is merely guidance, not a restriction, to rice exporters so that they can decide their business plans to find their export markets and sign the export contract.

Question 102

We note that traders who have registered their businesses are entitled to export, and would be interested in information on whether there are any criteria traders have to meet to be eligible to export rice.

Answer:

Export of rice is generally encouraged by the Government of Viet Nam to assist farmers to sell their agricultural production. As a result, traders who have legitimately registered their trading business are entitled to export rice (except for special periods when food security is threatened).

Question 103

We are pleased that Viet Nam is willing to make a commitment to apply any export restrictions in a manner fully consistent with WTO provisions.

Answer:

We thank you for the comment.

Question 104

Regarding Question 180 of WT/ACC/VNM36, we appreciate the explanations of Viet Nam on the rationale of the export duties imposed on ferrous and non-ferrous scrap. However, we remain concerned as regards the effect of these measures and request that Viet Nam eliminates the export duties imposed on ferrous and non-ferrous scrap upon 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.
- Viet Nam believes that imposition of export duty on ferrous and nonferrous 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. In Viet Nam's view, the export duty would not incur any violation of WTO's rules.

- **Export subsidies**

Question 105

We welcome Viet Nam's commitment to eliminate subsidies contingent upon localization ratios and the use of domestic over imported goods upon accession to the WTO.

We note that Viet Nam proposes to eliminate subsidies contingent upon export performance within three years from the date of accession, and to eliminate the remaining prohibited subsidies within nine years from the date of accession. We are concerned at the proposed timeframes and would wish to see such subsidies eliminated upon accession.

Answer:

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

- (i) to eliminate subsidies contingent upon localization ratios and the use of domestic over imported goods upon accession to the WTO;
- (ii) to eliminate subsidies in the form of direct payment from the State budget contingent upon export performance upon accession to the WTO; and
- (iii) to eliminate the remaining prohibited subsidies (mainly subsidies in the form of investment incentives) within seven years from the date of accession to the WTO.

Question 106

Regarding Question 189 of WT/ACC/VNM36, we welcome the announcement of Viet Nam at the informal meeting of the Working Party of 20 May 2005, that Viet Nam will eliminate upon accession subsidies in the form of direct payments contingent on export performance.

Viet Nam seeks a transitional period of nine years to eliminate remaining prohibited subsidies (mainly subsidies in the form of investment incentives). This is not acceptable, since the exemptions in the Agreement on Subsidies and Countervailing measures concerning prohibited subsidies do not apply to Viet Nam. We therefore urge Viet Nam to eliminate all prohibited subsidies contingent on export performance upon accession.

Answer:

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

- (i) to eliminate subsidies contingent upon localization ratios and the use of domestic over imported goods upon accession to the WTO;
- (ii) to eliminate subsidies in the form of direct payment from the State budget contingent upon export performance upon accession to the WTO; and
- (iii) to eliminate the remaining prohibited subsidies (mainly subsidies in the form of investment incentives) within seven years from the date of accession to the WTO.

C. INTERNAL POLICIES AFFECTING FOREIGN TRADE IN GOODS

- **Industrial policy, including subsidies**

Question 107

We reiterate that we would like to see Viet Nam eliminate by accession all subsidies prohibited by the Agreement on Subsidies and Countervailing Duties. We note that the exemptions found in Article 27 of the ASCM have either expired or do not apply to Viet Nam.

Answer:

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

- (i) to eliminate subsidies contingent upon localization ratios and the use of domestic over imported goods upon accession to the WTO;
- (ii) to eliminate subsidies in the form of direct payment from the State budget contingent upon export performance upon accession to the WTO; and
- (iii) to eliminate the remaining prohibited subsidies (mainly subsidies in the form of investment incentives) within seven years from the date of accession to the WTO.

Question 108

We appreciate the answers Viet Nam provided on its industrial policy, including subsidies. We regret that the statistical information we requested could not be provided. We hope Viet Nam can use the summer to work on these statistics and provide the data requested before the next Working Party meeting.

Answer:

The collection and processing of such data take a great deal of time and resources. In addition, given the current undeveloped statistical network of Viet Nam, the calculation of the value of corporate income tax incentives granted to domestic and foreign invested enterprises is very difficult. Therefore, Viet Nam would like to provide hereunder the general statistical information on the number of domestic enterprises which are granted incentives in the fields of investment. We shall make our best efforts to gather further information/data on the number of foreign invested enterprises which are being accorded with the incentives.

Table 1 - The structure of investment incentives according to the types of enterprises granted by local authorities from 1996-2003

Types of Enterprises	Number of projects	
	Number	Percentage (%)
State-owned Enterprises	2,584	22.8
Limited Liabilities Companies (Co., Ltd)	3,992	35.2
Joint-stock Companies	903	8.0
Sole proprietor Enterprise	2,776	24.4
Co-operatives	481	4.2
Private Individuals, Households	598	5.3
Overseas Vietnamese	23	0.2
Total	11,357	100

Table 2 - The number of investment projects according to the areas of investment incentives in the period of 2001-2003

Areas of investment incentives	Number of projects
Areas with difficult socio-economic conditions (List B)	1,863
Areas with specially socio-economic conditions (List C)	550
Total	2,413

Table 3 - The structure of investment fields according to the list of sectors with investment incentives in the period of 2001-2003

The investment fields	Number of projects
I. Afforestation or forest regeneration zones; planting of perennial trees on unused land or barren hills; land reclamation, salt-making, cultivation of marine products in unexploited waters	188

The investment fields	Number of projects
II. Construction of infrastructure; development of public transportation; development of education, training, healthcare and ethnic cultures	371
III. Production and trading of exported goods	862
IV. Offshore fishing of marine wildlife; processing of agricultural, forestry, and marine products; provision of technical services which directly cater for agriculture, forestry and fishing activities	1,050
V. Scientific and technology research and development; scientific and technology services; legal consultancy, investment consultancy; business consultancy, management consultancy, protection of intellectual property rights and technology transfer	161
VI. Investment in construction of new production lines, investment in expansion of scale, investment in technology renovation, investment in environmental and ecological improvement and urban sanitation improvement; relocation of production establishments to non-urban areas; diversification of industries, trades and products	2,415
VII. Other industries	1,449
Total	6,496

- **Technical barriers to trade, standards and certification**

Question 109

We look forward to receiving the list of goods subject to mandatory quality inspection, and the list of products subject to mandatory safety certification.

Answer:

The list of goods subject to mandatory inspection and the list of products subject to mandatory safety certification are currently subject to revision. Once published, the revised lists will be provided to the Working Party.

Question 110

We also look forward to details of line management measures within the purview of the TBT Agreement to be incorporated into the single comprehensive list of non-tariff measures in the format requested in Question 157 of WT/ACC/VNM/36.

Answer:

Concerning line-management: Please refer to Annex 2 attached herewith that provides further information about the existing line-management regime (in which line management measures are classified by import licence, SPS and TBT measures).

- **Sanitary and phytosanitary measures**

Question 111

We are pleased that Viet Nam has confirmed that it intends to comply with the SPS Agreement from the date of accession.

Answer:

We thank you for the comment.

Question 112

We would be interested in further information on the ASEAN harmonisation framework for phytosanitary procedures.

Answer:

The framework of ASEAN harmonization for phytosanitary measures are in line with rules of the SPS Agreement. In the recent years, ASEAN countries mainly concentrated on exchanging legal normative documents, results of scientific studies relating to phytosanitary area and developed together pest list on some major crops for conducting risk assessment. In general, results obtained from the process of ASEAN harmonization for phytosanitary measures are still limited.

Question 113

We also look forward to details of line management measures within the purview of the SPS Agreement to be incorporated into the single comprehensive list of non-tariff measures in the format requested in Question 157 of WT/ACC/VNM/36.

Answer:

Concerning line-management: Please refer to Annex 2 attached herewith that provides further information about the existing line-management regime (in which line management measures are classified by import licence, SPS and TBT measures).

Question 114

(i) **Paragraph 204 of WT/ACC/SPEC/VNM/5. The comments on S&DT and Technical Assistance made by Argentina when Viet Nam required deferring the date of application of the SPS Agreement for its WTO accession should be taken into account. It should also be highlighted that the WTO case law has recognized that the Agreement doesn't force Members to conduct their own risk assessment, instead, they may use the ones conducted by other Members or international organizations when technically viable.**

(ii) **Paragraph 205 of WT/ACC/SPEC/VNM/5. The SPS obligation is to harmonize "on the basis of" international standards (Codex Alimentarius, OIE, IPPC), which should not be confused with the ones adopted in the context of a regional integration scheme (e.g. ASEAN).**

Paragraph 208 of WT/ACC/SPEC/VNM/5. Please provide more information.

(iii) **Paragraph 209 of WT/ACC/SPEC/VNM/5. In relation to Viet Nam's mention that its meat import requirements are "generally" based on OIE standards, it should make it clear whether, in the remaining cases, its standards are stricter than the ones internationally established or not. If so, the obligation of the required scientific evidence should be taken into account, particularly in light of Viet Nam's difficulties to conduct its own assessments.**

Answer:

(i) Yes, the comment is correct.

- (ii) Yes, the comment is correct.

Regarding GMO labelling mentioned in paragraph 208 of document WT/ACC/SPEC/VNM/5, this is a relatively new subject in Viet Nam and that no national standards for GMO products have been developed yet. A Regulation on biological safety for genetically modified organisms and their products is being drafted. During the preparation of this Regulation, Viet Nam has consulted to a number of biological safety regulations issued by WTO Members.

- (iii) Viet Nam confirms that its meat import requirements are generally based on OIE standards. In the remaining cases, its standards are not stricter than the ones internationally established standards.

Question 115

Work on the TBT and SPS sections of the Working Party Report will be critical to sustaining momentum towards Viet Nam's accession. We will be addressing these issues in writing.

Answer:

Viet Nam is willing to take note of the comments and suggestions of the Working Party's Members.

- **Trade-related investment measures**

Question 116

We thank Viet Nam for its commitment to fully comply with the TRIMs Agreement upon accession.

Answer:

We thank for the comment.

Question 117

We welcome the commitment to eliminate the export ratio requirement and fully agree that its elimination would improve the business climate in Viet Nam (paragraph 220 of WT/ACC/SPEC/VNM/5). However, we would question the view that compulsory export ratio requirements are not covered by provisions of the TRIMs Agreement. Measures of this kind fall within the purview of paragraph 2(c) of the Annex to the TRIMs Agreement, and are also prohibited under Article XI:1 of GATT 1994.

We ask that Viet Nam reconsider its statement on this issue at paragraph 220 of WT/ACC/SPEC/VNM/5.

Answer:

In Viet Nam's view, it may be unnecessary to discuss further about this issue as Viet Nam has committed to abolish the export ratio requirement upon accession to the WTO.

- **State-trading entities**

Question 118

We note that, in Viet Nam's revised Table 1 in Annex 2 of WT/ACC/VNM/36/Add.1 on the Schedule of Commitments on Import Trading Rights, some products will now be subject to State Trading Enterprises from the date of accession. We would appreciate clarification of what this means and whether the enterprises involved have been, or will be, notified as State Trading Enterprises.

Answer:

Almost all of the enterprises corresponding to the products subject to State Trading Enterprises stated in Table 1, Annex 2 of WT/ACC/VNM/36/Add.1 have been notified in Viet Nam's Notification of State Trading Enterprises (WT/ACC/VNM/14 and WT/ACC/VNM/14/Add.1), the main exception being cigarettes and cigars. Cigarettes and cigars shall be subject to state trading from the date of accession (as the import prohibition shall be removed from the date of accession). Viet Nam will provide additional notification for these items upon accession.

Question 119

Viet Nam states that equitization is under way among enterprises of VINACAFE, VINATEA and the Salt General Corporation, and we would appreciate information on the enterprises that are being equitized.

Answer:

These enterprises are being re-structured to operate under the scheme of parent company and subsidiary. According to the plan, from now to 2006, the Corporations shall be equitized when all of their subsidiaries have been equitized.

Concerning VINACAFE: the plan of restructuring and equitization of VINACAFE is now under the consideration and approval by the Government.

VINATEA consisting 11 tea producing enterprises. By the end of 2004, eight enterprises have been equitized. The remaining three shall complete their equitization in 2005.

The ten salt companies under the Ministry of Agriculture and Rural Development: Up to now, five enterprises have been equitized. There will be further five enterprises going into equitization in 2005.

Other salt production and business enterprises under the management of local authorities shall also be equitized.

Question 120

We thank Viet Nam for its commitment that the operation of State Trading Enterprises will comply with WTO provisions.

Answer:

Viet Nam would like to thank for this comment.

Question 121

In Viet Nam's revisions to Annex 2 of Table 1 in the draft report, Viet Nam reserved certain products to state trading. We would appreciate if Viet Nam could confirm that its state trading notification, WT/ACC/VNM/14, is consistent with Annex 2 of Table 1 or that it will update WT/ACCC/VNM/14 to reflect the changes. We would also appreciate if Viet Nam could provide in HS 8-digit format the list of goods it wishes to reserve to state trading.

We would also argue that once this reconciliation has occurred, the goods reserved to state trading should be removed from Annex 2 of Table 1 in the draft report.

Answer:

Please refer to Annex 1 (Table 3) at the end of this document for the consolidated list of products that Viet Nam reserves State Trading Enterprises.

- **Free zones, special economic areas**

Question 122

We remain concerned 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:

- (i) to eliminate subsidies contingent upon localization ratios and the use of domestic over imported goods upon accession to the WTO;
- (ii) to eliminate subsidies in the form of direct payment from the State budget contingent upon export performance upon of accession to the WTO; and
- (iii) to eliminate the remaining prohibited subsidies (mainly subsidies in the form of investment incentives) within seven years from the date of accession to the WTO.

Question 123

Regarding Questions 254 and 255 of WT/ACC/VNM36, we understand that Viet Nam is considering requesting a nine-year transitional period to phase out prohibited export subsidies in the form of investment incentives. We do not find this acceptable and urge Viet Nam to abolish all prohibited subsidies upon accession.

Answer:

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

- (i) to eliminate subsidies contingent upon localization ratios and the use of domestic over imported goods upon accession to the WTO;
- (ii) to eliminate subsidies in the form of direct payment from the State budget contingent upon export performance upon of accession to the WTO; and
- (iii) to eliminate the remaining prohibited subsidies (mainly subsidies in the form of investment incentives) within seven years from the date of accession to the WTO.

- **Agricultural policies**

Question 124

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 in the plurilateral process on agriculture.

Answer:

We agree with this suggestion.

Question 125

We nevertheless welcome the information that Viet Nam has provided that it is committed to eliminating export subsidies upon accession and its preparedness to bind its agricultural export subsidies at zero. We would hope that Viet Nam would therefore be in a position to make appropriate commitments in relation to these matters. We would propose the following language to replace paragraph 264 of WT/ACC/SPEC/VNM/5:

The representative of Viet Nam confirmed that agricultural export subsidies would be bound at zero in Viet Nam's Schedule of Concessions and Commitments for Goods. He also confirmed that export subsidies applied to agricultural products would accordingly be eliminated by the date of accession. The Working Party took note of these commitments.

Answer:

Viet Nam commits to bind its agricultural export subsidies at zero in its Schedule of Concessions and Commitments on Goods. Viet Nam has also committed previously that export subsidies applied to agricultural products would be eliminated upon accession. These commitments, however, are without prejudice to Viet Nam's rights and obligations arising from WTO's existing and future rules.

Question 126

Paragraph 264: The following wording is proposed:

"The Representative of Viet Nam agreed that, upon Viet Nam's accession, his country would bind its agricultural export subsidies at zero in its Schedule of Concessions and Commitments on Goods, and not maintain or apply any export subsidies for agricultural products, without prejudice to WTO existing rules."

Schedules of commitments for export subsidies would need to be adapted appropriately.

Answer:

Viet Nam commits to bind its agricultural export subsidies at zero in its Schedule of Concessions and Commitments on Goods. Viet Nam has also committed previously that export subsidies applied to agricultural products would be eliminated upon accession. These commitments, however, are without prejudice to Viet Nam's rights and obligations arising from WTO's existing and future rules.

Question 127

We reiterate our view that Viet Nam's VAT exemption for domestic farm production, if not extended to imports, remains inconsistent with Article III of the GATT 1994.

Answer:

The VAT law of Viet Nam provides that domestic unprocessed and semi-processed agri-products are not subject to VAT. This provision results from the fact that a lot of small scale households doing farm work sell their products without invoices and the administrative capacity of Viet Nam in this area is still weak and incapable of the inclusion of these products in to VAT scope. This provision is not to discriminate between domestic products and imports which would be inconsistent with Article III of GATT 1994. In addition, unprocessed and semi-processed agri-products will be subject to VAT on the whole values in the next phase of VAT taxation. Thus, the products are actually taxed by VAT.

Viet Nam highly appreciates the WTO members' understanding on its current difficulties in including this group of products into VAT scope. Viet Nam would like to receive technical assistance from the Working Party in this issue.

V. TRADE-RELATED INTELLECTUAL PROPERTY REGIME

- GENERAL

Question 128

We look forward to reviewing Viet Nam's draft Intellectual Property Law.

Answer:

An unofficial English translation of the Draft Intellectual Property Law (the fourth Draft) was provided to the Working Party prior to the Informal Meeting on 20 May 2005 and made public on the website of the National Office of Intellectual Property of Viet Nam (<http://www.noip.gov.vn>). We appreciate your goodwill in reviewing and giving comments on it. Any such comments would be taken into thorough and serious consideration in order to complete the Draft.

- Copyright and related rights

Question 129

Concerning the conditions for granting compulsory licenses, you mention in your answer to Question relating to paragraph 324 of WT/ACC/SPEC/VNM/5, that Section 51 of Decree No. 63/CP of 24 October 1996 would be amended to include provisions on conditions for granting compulsory licenses in compliance with Articles 31(f), (k), and (l) of the TRIPS Agreement.

- What is the state of play of the amendment of Section 51 of Decree No. 63/CP of 24 October 1996? What progress has been made in the legislative process since the last meeting of the Working Party?**
- We would like to ask Viet Nam to make an English copy of the draft amendment available to the Working Party.**

Answer:

The plan to amend Section 51 of Decree No. 63/CP of 24 October 1996 was cancelled in November 2004 (as the National Assembly officially included the Intellectual Property Law in the Legislative Plan of 2005). Provisions on conditions for granting compulsory licenses in compliance with Articles 31(f), (k), and (l) of the TRIPS Agreement have been introduced into the Draft Intellectual Property Law (the fourth Draft - Article 187). The Draft Law was debated by the National Assembly in May 2005 and is expected to be passed in November 2005.

An unofficial English translation of the forth Draft Intellectual Property Law has been submitted to the Working Party prior to the Informal Meeting on 20 May 2005.

- **Requirements on undisclosed information, including trade secrets and test data**

Question 130

In WT/ACC/VNM/36, in response to Question 276 concerning the requirements on undisclosed information, including trade secrets and test data, you mention that 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 and that consequently, the plan to issue a Circular guiding the implementation of the Decree No. 54/2000/ND-CP has been cancelled.

In your answer to Question relating to paragraph 335 of WT/ACC/SPEC/VNM/5, you mention that the Circular guiding the implementation of the Decree No. 54/2000/ND-CP was foreseeing protection of undisclosed tests and data submitted for marketing approval of pharmaceutical and agricultural chemical products and included the principles of non-disclosure and non-reliance.

- **Can you confirm that the relevant provisions of the Law on Competition provide for protection of undisclosed tests and data submitted for marketing approval of pharmaceutical and agricultural chemical products and include the principles of non-disclosure and non-reliance?**
- **We would like to ask Viet Nam to make an English copy of the relevant provisions of the Law on Competition available to the Working Party.**

Answer:

1. The Law on Competition (Chapter III - Unfair Competition Acts) contains provisions on prohibited acts of unfair competition, including acts of infringing business secrets (accessing, acquiring, using without authorization of owners of business secrets, including using for marketing approval of product, test data and other undisclosed data and other data submitted for marketing approval of products. However, such provisions just govern the relationship between competitors. More detailed and complete provisions, including obligations of regulatory agencies of marketing approval, have been introduced into the draft of Intellectual Property Law (the fourth Draft - Article 174).

An unofficial English translation of the fourth Draft Intellectual Property Law has been furnished to the Working Party prior to the Informal Meeting on 20 May 2005.

2. Viet Nam would like to provide an unofficial English translation of the business secret - related provisions of the Law on Competition (Article 41: Infringement of business secrets) to the Working Party:

"Article 41: Infringement of business secrets:

Enterprises are prohibited from carrying-out the following acts:

- Accessing or acquiring information on business secrets by taking acts against secret-keeping measures of lawful owners of such business secrets;
- Disclosing or using information on business secrets without authorization of owners of such business secrets;
- Breaching secret-keeping contracts or deceiving or abusing the trust of persons in charge of secret-keeping, to access, acquire or disclose information on such business secrets;
- Accessing or acquiring information on business secrets of others, when the later, as required by law, submit such business secrets under business-related procedures, such as procedures for marketing approval of products, or by taking acts against secret-keeping measures of State agencies; or using such information for business purposes, or for obtaining business-related licenses or marketing approval of products."

VI. POLICIES AFFECTING TRADE IN SERVICES

Question 131

Regarding Question 283 of WT/ACC/VNM/36, we welcome the statement of Viet Nam that "the establishment of a representative office is not compulsory to investors". We would like to have this statement inserted in the Working Party Report.

Answer:

As indicated in our latest Offer on Trade in Services to the WTO (WT/ACC/SPEC/VNM/2/Rev.4), representative offices of foreign services suppliers are permitted to be established in Viet Nam in order to seek, promote trade and tourism opportunities. This is not a condition imposed on foreign services suppliers in providing services in Viet Nam but is included in our Offer just for the meaning of clarification. In our opinion, therefore, it may not be necessary to insert sentence in the Working Party Report.

Question 132

We welcome the replies of Viet Nam to Questions 284 to 286. We would like to have them inserted in the Working Party Report.

Answer:

Regarding replies to Question 286, this is just the extracted content of 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. This Decree has been provided to the WTO Secretariat to circulate to all WTO Members.

We propose that the section on services be revised after the conclusion of the bilateral market access negotiations on services.

Question 133

Regarding Question 286 of WT/ACC/VNM/36, could Viet Nam explain the meaning of "goodwill towards the State of Viet Nam"?

Answer:

"Goodwill towards the State of Viet Nam" could be understood as follows:

- Not to propagate against Viet Nam; not to destroy the solidarity of the Vietnamese ethnic community;
- Not to propagate and excite aggressive war; not to arouse the hatred among the peoples and nations in the world; not to excite violence; not to communicate reactionary thought and opinions;
- Not to leak national, military, security, and other secrets provided for in the laws and regulations;
- Not to distort historic truth; to hurt reputation of the nation, national heroes, etc.

Question 134

We do not agree with Viet Nam's reply to Question 289 of WT/ACC/VNM/36. The Working Party Draft Report needs to clarify Viet Nam's commitments and explain how trade will develop after accession. Hence we would insist on the reference to economic needs test to be removed.

Answer:

We propose that the section on services be revised after the conclusion of the bilateral market access negotiations on services.

Question 135

We would like to stress that the fact that GATS Article XV negotiations are ongoing is not an excuse for not providing info on subsidies related to trade in services, namely when a country has scheduled National Treatment limitations on subsidies. Viet Nam is requested to provide information on subsidies related to trade in services, based on the definition that they have used for scheduling those National Treatment limitations.

Answer:

Viet Nam would like to take note of these comments. As there have been no specific criteria to define what types of subsidies to be provided to the WTO Members (as opposed to the goods area where there have been well-defined format for notification), we do need technical assistance from WTO Members in this regard.

Question 136

We welcome the replies of Viet Nam to Questions 291 to 293 and 296. We would like to have them inserted in the Working Party Report.

Answer:

We propose that the section on services be revised after the conclusion of the bilateral market access negotiations on services.

ANNEX 1

Commitments On Trading Rights

1. Viet Nam confirms that wholly Vietnamese-invested enterprises have been granted full right to trade since 1 January 2002.
2. Not later than 1 January 2007, all foreign invested capital enterprises shall be allowed to be importers of record and shall:
 - be entitled to import and export all kinds of goods, except for those subject to state trading enterprises (as listed in the attached Table 3) and the restrictions listed in the attached Tables 1 and 2; and
 - shall register their business lines with the relevant State's registration agencies.
3. Foreign individuals shall be granted similar trading rights as Vietnamese individuals.
4. The trading rights referred herein shall not automatically grant the importers the right to distribute goods in Viet Nam. The distribution of goods and the provision of distribution services shall be subject to Viet Nam's Specific Schedule of Commitments in Services.
5. The trading rights referred herein shall in no case affect the rights of the Government of Viet Nam to:
 - adopt or enforce requirements for customs and fiscal purposes; and
 - adopt or enforce regulations with respect to the importation, exportation, re-importation, re-exportation, and transit of goods in consistence with relevant provisions of the WTO Agreements and with Viet Nam's commitments upon accession to the WTO, such as those relating to import licensing, state trading, TBT and SPS.

Table 1: Schedule of Commitments On Import Trading Rights

HS No.	Description	Schedule	Rationale
	Pharmaceutical products		
3003	Medicaments nesoi of mixtures, not dosage etc.	2009	Viet Nam needs time to draft transparent and non-discriminatory criteria
3004	Medicaments nesoi, mixed or not, in dosage etc.	2009	
3006	Pharmaceutical goods in note 4 to chapter 30	2009	
3706	Cinematographic film	2009	
	Motion-picture film, exposed and developed		
	Unused postage, printed cards, calendars		
4907	Unused postage, check forms, banknotes, stock, etc.	2009	
4909	Printed or illustrated post cards, greeting cards, etc.	2009	
4910	Calendars, calendar blocks of any kind, printed	2009	
4911	Printed matter nesoi, incl print pictures & photos	2009	
	Industrial printers		
8442	Machinery etc nesoi for type-setting, making printing plates etc.	2009	
8443	Print machinery excluding ink-jet printers (HS 84435100), machinery for used ancillary to printing nesoi. Other machinery	2009	
8525	Transmission apparatus for radio-telephony etc; TV camera & other video camera recorders excluding mobile phones (HS 852520) and consumer cameras (HS 85254010)	2009	
8526	Radar apparatus, radio navigational aid apparatus & radio remote control apparatus	2009	

Notes: For the purpose of this Table, schedule starts from 1 January of the specified year.

Table 2: Schedule of Commitments On Export Trading Rights

HS No.	Description	Schedule	Rationale
	Cereals		
1006	Rice	2011	Viet Nam needs time to draft transparent and non-discriminatory criteria

Notes: For the purpose of this Table: Schedule starts from 1 January of the specified year.

Table 3: List of Goods Subject to State Trading Enterprises

HS	Description
2402	Cigars, cheroots, cigarillos and cigarettes
2403	Other manufactured tobacco and manufactured tobacco
2709	Crude oil from petroleum and bituminous minerals
2710	Oil (not crude) from petrol & bitum mineral etc.
4901	Books, brochures & similar printed matter
4902	Newspapers, journals & periodicals
4903	Children's picture, drawing or colouring books
8524	Records, tapes and other recorded media for sound or ... excluding 852410, 852431, 852432, 85243910, 85244000, 852491, 85249920
8802	Aircraft
8803	Parts of goods of heading 8801 or 8802

ANNEX 2

Current List of Imported Goods Subject to Line Management
(issued in conjunction with Decision No. 46/2001/QĐ-TTg of the Prime Minister dated 4 April 2001
on the management of exports and imports in the 2001-2005 period)

Note: All line-management measures shall not limit the importation of the products involved in terms of value or quantity.

I. LIST OF GOODS SUBJECT THE LINE MANAGEMENT OF THE MINISTRY OF AGRICULTURE AND RURAL DEVELOPMENT

Automatic import licence

No.	Goods	HS	WTO Justification
1.	Plants and animal gene sources; micro-organisms for scientific and technical research and exchange purposes	N.A	GATT Article XX.b

TBT/SPS requirement

No.	Goods	HS	WTO Justification
1.	Veterinary medicines and materials for making veterinary medicines	ex 3004, 30062000	TBT/SPS Agreement
2.	Biological products for veterinary use	N.A	
3.	Pesticides and materials for making pesticides	ex 3808	
4.	Plants and animal strains, and various types of insects	ex 0106, 06, 07, 08, 09, 12	
5.	Animal feeds and materials for producing animal feeds	ex 23	
6.	Fertilisers newly used in Viet Nam	3101, 3102, 3103, 3104, 3105	

II. LIST OF GOODS SUBJECT TO LINE MANAGEMENT OF THE MINISTRY OF FISHERIES (FOR SPS PURPOSES)

1. The Ministry of Fisheries is to carry out its line management by issuing the following lists of goods:
 - The list of aquatic breeds allowed to be imported ordinarily.
 - The list of feeds for aquaculture farming and materials for producing feeds for aquaculture farming allowed to be imported ordinarily.
 - The list of drugs, chemicals and materials for producing drugs and chemicals used in aquaculture farming allowed to be imported ordinarily.
2. Any kind of breeds, feeds and materials for producing feeds, drugs, chemicals and materials for producing drugs and chemicals not contained in the list of ordinary imports are allowed to be imported into Viet Nam after obtaining testing certificates issued by the Ministry of Fisheries. After the testing period, the Ministry of Fisheries is to decide whether or not to add the items in question to the list of ordinary imports. If the Ministry of Fisheries has added certain goods to the list of ordinary imports, these goods are allowed to be imported upon demand, without any quantitative limitations and no import licences shall be required.

III. LIST OF GOODS SUBJECT TO LINE MANAGEMENT OF THE STATE BANK (i.e. THE CENTRAL BANK) OF VIET NAM

Automatic import licence

No.	Goods	HS	WTO Justification
1.	Specialized cars for carrying money	ex 8704	Government procurement and monetary security ¹ .
2.	Multi-functional devices for counting, classifying, bundling and shredding money	ex 8472	
3.	Treasury doors	ex 7308	
4.	Papers for printing money	ex 4802	
5.	Inks for printing money	ex 3215	
6.	Machines for printing hard-to-forge money, payment vouchers, certificates and other valuable papers to be issued and managed by the banking industry	N.A	
7.	Money printers (technical specifications announced by the State Bank)	ex 8443	
8.	Machines for molding and pressing metal money (technical specifications announced by the State Bank)	ex 8462	

Management principles:

The State Bank of Viet Nam will designate eligible enterprises to import items indicated in this list, and be responsible for managing their use properly.

IV. LIST OF GOODS SUBJECT TO LINE MANAGEMENT OF THE GENERAL DEPARTMENT OF POSTS AND TELECOMMUNICATIONS²

Automatic import licence

No.	Goods	HS	WTO Justification
1.	Postage stamps, stamp publications and items of postage stamps	49070020 9704	Natural monopoly
2.	Radio transceivers of 9 KHz-400 KHz frequency band and 60 mW or more capacity	ex 8525	GATT Article XXI.b.(ii)
3.	Radar equipment, radio support equipment and radio remote control equipment	ex 8526	GATT Article XXI.b.(ii)

¹ According to GATS - Annex on Financial Services, paragraph 1.b(i), importation for the activities solely conducted by the State Bank in pursuit of monetary security policy, which are not considered as services governed by GATS.

² The formerly "General Department of Posts and Telecommunications" is now the "Ministry of Posts and Telecommunications".

TBT requirement/Technical standards conformity test

No.	Goods	HS	WTO Justification
1.	Large and small capacity switchboards, net accessing equipment using V 5.1 and V 5.2 interface	851730	TBT Agreement
2.	PABX switchboards	851730	
3.	Transmission equipment	ex 8525	
4.	Optic-fibre cables	854470	
5.	Metal communications cables	7413, 7614	
6.	Wireless telephony equipment	ex 8517	
7.	Terminals for connecting with PSTN and ISDN networks	ex 8471 ex 8525	
11.	Telex machines	8517	
12.	Fax machines	8517	
13.	Pagers	8527	
14.	Mobile phones	8525	
15.	Low speed picture telephones	8525	

V. LIST OF GOODS SUBJECT TO LINE MANAGEMENT OF THE MINISTRY OF CULTURE AND INFORMATION

Automatic import licence

No.	Goods	HS	WTO Justification
1.	Publications of different types (books, newspapers, magazines, pictures, photos, calendars etc.)	4901 4902	GATT Article XX.a
2.	Cinematic works and other audio-visual products recorded on any materials	8524	
3.	Specialized print proof making systems and type setting systems used in printing industry (specialized scanners, colour analysers, film developing and enlarging machines, sample making devices)	8442	
4.	Offset printers, flexo printers, bronze drum printers, heat processing printers, ink pad printers and colour laser printers	8443	

VI. LIST OF GOODS SUBJECT TO LINE MANAGEMENT OF THE MINISTRY OF HEALTH

Automatic import licence

No.	Goods	HS	WTO Justification
1	Addictive substances, sedative substances, pre-substances (including final medicines).	3004	GATT Article XX.b
2	Finally tested medicines for human beings, which have not been registered	3004	
3	Vaccines and vaccination-related biological products	3002	
4	Medical equipment which may directly affect the health of human beings	ex 9019, ex 9020	

TBT requirement/Technical standards conformity

No.	Goods	HS	WTO Justification
1.	Finally tested medicines for human beings, which have been already registered	3004	TBT Agreement
2.	Materials for producing medicines, pharmaceutical materials, excipients, capsules and packaging which are in direct contact with medicines	19059060, ex 29, 9602	
3.	Cosmetics which may directly affect the health of human beings	3304	
4.	Chemicals and products for killing insects and for sterilisation to be used for household and health purposes	3004, 3804	

VII. LIST OF GOODS SUBJECT TO SPECIAL MANAGEMENT OF THE MINISTRY OF INDUSTRY

Automatic import licence³

No.	Goods	HS	WTO Justification
1.	Toxic chemicals and products containing toxic chemicals	ex 28, ex 29	GATT Article XX.b

TBT requirement

No.	Goods	HS	WTO Justification
1.	Sodium hydroxide (liquid)	28151200	TBT Agreement
2.	Hydrochloric acid	2806	
3.	Technical sulphuric acid	2807	
4.	Pure sulphuric acid	2807	
5.	Technical phosphoric acid	2809	
6.	Mono-alum from aluminium hydroxide	2833	

³ The list of toxic chemicals subject to import prohibition will be issued by the Ministry of Industry. Other toxic chemicals and products containing toxic chemicals will be subject to automatic import licensing.