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Additional Question and Replies

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II. ECONOMIC POLICIES

- Monetary and Fiscal Policy

Question 1

Paragraph 10: Please update the data on the level of commercial debt owed by public sector enterprises including to State-Owned Commercial Banks. Please also advise the percentage of public sector enterprise debt that is non-performing. What steps is Viet Nam taking to address non-performing public sector debt owed to State-Owned Commercial Banks?

Answer:

The ratios of outstanding loans to SOEs by Viet Nam's credit institutions are as follows:

		2001	2004
1.	Outstanding loans to SOEs by credit institutions (trillion VND)	79.7	142.9
2.	Share of SOEs' outstanding loans in total outstanding loans of credit institutions (per cent)	42.2	34.0
3.	Share of SOEs' outstanding loans in the total outstanding loans of 4 State-owned commercial banks (SOCBs) (per cent)	53.6	42.8

Currently the outstanding debts of SOEs, including those owed to SOCBs have been solved under the framework of a comprehensive SOEs equitization and restructuring program.

To enhance the safety and stability of the system and step by step adopt international standards in banking operation, the State Bank of Viet Nam (SBV) promulgated the Decision No.493/2005/QD-NHNN dated 22 April 2005 on debt classification and provisioning for credit risk resolution in banking operation of credit institutions. According to this Decision, debts of clients in general (that includes debts of SOEs) owed to credit institutions are classified into 5 categories and provisioning is provided respectively:

- First category: qualified debt, provisioning ratio – 0 per cent;
- Second category: debt requiring attention, provisioning ratio – 5 per cent;
- Third category: below-standard debt, provisioning ratio - 20 per cent;
- Forth category: doubted debt, provisioning ratio – 50 per cent;
- Fifth category: possibly lost debt, provisioning ratio – 100 per cent
(debts belonging to 3rd, 4th, 5th categories respectively are considered as bad debts).

Credit institution shall be allowed to use provisioning sources to solve risks related to its bad debts (i.e. to write-off the debts in balance-sheet items and to enter those debts under off-balance sheet items) in following cases: (i) clients are organizations, enterprises subject to bankruptcy, dissolution in accordance with the applicable laws and regulations; natural persons who died or are missing; (ii) debts belonging to the 5th category.

In addition, credit institutions shall have to implement various measures to collect its debts. These measures include closely monitoring and pushing up the debt collection process, resolving assets used as collateral and restructuring bad debts.

Question 2

Please describe the scope of all lending from State-Owned Commercial Banks to public sector enterprises. Please provide statistics on lending through the Development Assistance Fund. What proportion of these loans is non-performing?

Answer:

The ratios of outstanding loans to SOEs by Viet Nam's credit institutions are as follows:

		2001	2004
1.	Outstanding loans to SOEs by credit institutions (trillion VND)	79.7	142.9
2.	Share of SOEs' outstanding loans in total outstanding loans of credit institutions (per cent)	42.2	34.0
3.	Share of SOEs' outstanding loans in the total outstanding loans of 4 State-owned commercial banks (SOCBs) (per cent)	53.6	42.8

Please find attached Annex I regarding the most recent statistics on lending through the Development Assistance Fund. Some further statistics for the previous period have also been provided in Viet Nam's Subsidies Notification (document WT/VNM/13/Add.2).

Question 3

Referring to paragraphs 11-13, please discuss the volume of directed lending and other subsidy programs, both in absolute and as a percentage of government expenditures, and the effect on the budget deficit.

Answer:

As can be seen from the Annex I, being a poor country, Viet Nam's subsidies programs, including those effected through directed lending, are insignificant. As a result, their effect on the budget deficit is minimal.

- **Foreign Exchange and Payments**

Question 4

Please provide an update on legislative status of the draft Ordinance on Foreign Exchange and a copy of it. Please confirm in the text that Viet Nam will eliminate foreign exchange and surrender requirements and describe how it will help bring Viet Nam into conformity with IMF Article VIII requirements.

Answer:

The draft Ordinance on Foreign Exchange is planned to be submitted to the Standing Committee of the National Assembly in September 2005 for approval.

To apply the IMF's Articles of Agreement, in parallel with drafting the Ordinance on Foreign Exchange, the SBV has formulated the draft Degree on Amendments of and Supplement to Some Articles of the Degree No. 63/1998/ND-CP dated 17 August 1999 on foreign exchange control. The draft Degree has been formulated with technical assistance of IMF's legal experts and forwarded to

the IMF's Office in Washington for review. IMF's Office sent a notification to the SBV informing the IMF's acceptance of the whole content of this draft Degree and confirmed that, within 15 days from the issuing date of this Degree, IMF shall officially announce Viet Nam's acceptance of Article VIII of IMF's Articles of Agreement.

Question 5

Please provide a copy of the draft Decree on Foreign Exchange Control to the Working Party for its review.

Answer:

The draft Decree has been commented upon by the technical staffs of the IMF and Viet Nam expects that IMF shall officially announce Viet Nam's acceptance of Article VIII of IMF's Articles of Agreement.

Question 6

Paragraph 18 indicates that PM Decision No. 46/2003/QD-TTg, issued on 2 April 2003, set foreign exchange surrender requirements at 0 per cent, but did not eliminate the authority of the Government to apply this requirement from Viet Nam's law.

- **Please describe the specific surrender requirements provided for in the law and how they operate.**
- **Under what circumstances would Viet Nam re-impose foreign exchange surrender requirements? Are there any limiting criteria to the application?**
- **Could foreign exchange surrender requirements be re-imposed by administrative fiat, or would National Assembly action be required?**
- **Please describe in the text what steps Viet Nam has taken to address measures at odds with Articles XI and XVI of the GATS noted by Members.**

Answer:

According to the Prime Minister's Decision No. 46/2003/QD-TTg dated 2 April 2003, the ratio of foreign exchange surrender requirement applied to current revenue sources of residents being economic or social organizations was set at 0 per cent.

In the draft Ordinance on Foreign Exchange, residents being organizations shall not be required to sell their current revenue in foreign currencies to commercial banks. The Government only resorts to temporary foreign exchange controls as special limitations in exceptional cases in order to maintain national financial and monetary security in accordance with the IMF's Articles of Agreement and the IMF's Document No. 144 (52/51) dated 14 August 1952.

To apply the IMF's Articles of Agreement, in parallel with drafting the Ordinance on Foreign Exchange, the SBV has formulated the draft Degree on Amendments of and Supplements to Some Articles of the Degree No. 63/1998/ND-CP dated 17 August 1999 on foreign exchange control. The draft Degree has been formulated with technical assistance of IMF's legal experts and forwarded to the IMF's Office in Washington for review. IMF's Office sent a notification to the SBV informing the IMF's acceptance of the whole content of this draft Degree and confirmed that, within 15 days from the issuing date of this Degree, IMF shall officially announce Viet Nam's acceptance of Article VIII of IMF's Articles of Agreement.

The draft Degree on Amendments of and Supplements to Some Articles of the Degree No. 63/1998/ND-CP dated 17 August 1999 is being circulated to relevant ministries and agencies for

comments in accordance with Viet Nam's legislation on the promulgation of legal normative documents.

Question 7

Paragraph 19 states that "Viet Nam only maintained restrictions on (i) capital transfers abroad for investment by resident organizations, which were subject to approval by the competent agencies and within the amount of foreign currency owned by them; and (ii) payment and repayment of foreign loans by resident organizations, which were permitted only when their loan agreements had been certified by the State Bank of Viet Nam."

Have these restrictions been explicitly approved by the IMF?

Answer:

As an IMF member country, Viet Nam has the obligation to cooperate with the IMF and other member countries to ensure the orderly implementation of foreign exchange regulations and to strengthen the stability of the exchange rate regime. One of the channels for the IMF to monitor this process and offer consultancy to member countries is via working missions in accordance with of Article IV of the IMF's Articles of Agreement. Presently, the IMF's working mission visits Viet Nam once a year.

Question 8

How are these measures justified in light of Viet Nam's balance of payments situation?

When will these restrictions be removed?

What does "certified" mean? Is it registration or does it require a prior approval process? We note that a prior approval process could be used to restrict trade.

Answer:

According to the Government Decree No. 90/1998/ND-CP dated 7 November 1998 promulgating Regulations on Management of Foreign Loans and Loan Repayments and the Circular No. 09/TT-NHNN dated 21 December 2004 of the State Bank of Viet Nam (SBV) providing guidelines for borrowing and repayment of foreign loans by enterprises, enterprises have their full autonomy to decide the signing of their foreign loan contracts based on the principle of self-borrowing and self-repayment principles. Enterprises are required, after signing a medium and/or long-term foreign loan contract, to register their borrowing with the SBV. This requirement is intended to allow the State management authority (i.e. the SBV) to monitor medium and long-term foreign borrowings of enterprises and, in coordination with the Ministry of Finance, to manage and maintain the national foreign debts within the safety limit.

Question 9

Paragraph 20: Present requirements and restrictions on the repayment of loans and capital investments abroad by Vietnamese enterprises, Decree No. 22/1999/ND-CP specifies that enterprises investing abroad need to: (i) obtain an overseas investment license from the Ministry of Planning and Investment; (ii) open a foreign account with an authorized bank and channel all remittances through this account; and (iii) register the opening of the account and investment capital transfers with a bank branch in the province or city of its head office.

What is meant by the term "Vietnamese" enterprise?

Answer:

Within the context of the Decree No. 22/1999/ND-CP dated 14 April 1999 on outward investment by Vietnamese enterprises, the term "Vietnamese enterprises" is defined to cover: (i) Enterprises established under the Law on State-owned Enterprises; (ii) Cooperatives established under the Law on Cooperatives; and (iii) Enterprises established under the Law on Enterprises. As such, neither foreign investors in neither Viet Nam nor foreign-invested companies (in forms stipulated in the Law on Foreign Investment) in Viet Nam are considered "Vietnamese enterprises" for the purpose of this Decree.

Question 10

What are the procedures for obtaining an overseas investment license from the Ministry of Planning?

Answer:

Ministry of Planning and Investment issues licenses for outward investments to Vietnamese enterprises. The dossier of applying for an outward investment license shall include the following documents: (i) The application for investment abroad; (ii) A copy of Establishment Decision (or Business Registration) of the enterprise; (iii) The document of accepting investment granted by the competent body of country receiving investment (if any); contract, agreement with foreign partner on the investment project; (iv) The exposition on investment project in terms of objectives, target, sources of investment capital of the enterprise; (v) Mode of investment, mode of capital transfer, mode of profit repatriation; (vi) The financial report of enterprise; (vii) The document of accepting investment abroad issued by the body that issued the Decision of Establishment of the enterprise (for State-owned enterprises). After making appraisal, the Ministry of Planning and Investment shall issue an outward investment license to the enterprise within 30 days as from the date of receiving the complete and valid dossier.

Question 11

What constitutes an authorized bank through which remittances must be channelled?

Answer:

An "authorized bank" should be understood to cover all foreign exchange authorized credit institutions, including domestic and foreign commercial banks, operating in Viet Nam. Vietnamese enterprises register to open accounts at authorized banks where enterprises' headquarters are located to process the outward and inward transfer of funds.

Procedures for opening a foreign exchange account with a foreign exchange authorized banks are specified in the Circular No. 01/2001/TT-NHNN dated 19 January 2001 of the SBV providing guidance for foreign exchange control with respect to outward direct investments by Vietnamese enterprises. In order to monitor the implementation of their outward investment projects, Vietnamese enterprises are required to register their account and schedule for abroad transfer of capital via an authorized bank.

Question 12

The text should clarify circumstances under which foreign invested enterprises can open foreign exchange accounts abroad.

Answer:

Pursuant to the Circular No. 04/2000/TT-NHNN dated 18 May 2001 providing guidance on foreign exchange controls applying to foreign invested enterprises and foreign parties to business cooperation contracts, foreign invested enterprises (FIEs) and foreign parties to business cooperation contracts (FBPs) are entitled to open accounts at overseas banks to facilitate medium and long term overseas borrowings as stipulated in Point 2 Item I, Chapter V, Part II of the Circular No. 01/1999/TT-NHNN7 dated 16 April 1999 providing guidance on the implementation of the Decree No. 63/1998/ND-CP dated 17 August 1998 of the Government on foreign exchange controls. In addition to opening accounts as stated above, in special circumstances, FIEs and FBPs are permitted by the State Bank of Viet Nam to open accounts overseas to serve other activities based on the following conditions:

- (i) Enterprises which are subject to very important investment projects according to the Government's Programme;
- (ii) Enterprises invested under the types of BOT, BTO and BT that need to open overseas accounts to implement their commitments;
- (iii) Enterprises that are engaged in international trade including aviation, navigation, post and telecommunications, insurance and tourism and wish to open foreign currency accounts overseas to conduct clearing transactions in accordance with international customs;
- (iv) Enterprises that are entitled to open overseas branches or representative offices and need to open accounts overseas to serve the operating purposes of such branches or representative office.

For other cases that are not stipulated above, based on the demand and the need for opening an overseas account, the Governor of the State Bank of Viet Nam will consider to settle.

Besides, investment projects under the stipulation of the Petroleum Law are entitled to open overseas accounts as stipulated in the Petroleum Law and within 15 days from the date of opening the overseas account, such account must be registered with the State Bank of Viet Nam.

Question 13

In reference to Paragraph 20, do the actions in subsections (i./ii./iii.) require a prior approval process?

Answer:

Pursuant to the Circular No. 05/2001/TT-BKH guiding the investment activities abroad by Vietnamese enterprises dated 30 August 2001, Vietnamese enterprises shall be allowed to invest abroad after getting the licenses for investment abroad granted by the Ministry of Planning and Investment. The consideration for granting licenses for investment abroad shall comply with the provisions stipulated at Article 6 of the Decree No. 22/1999/ND-CP of 14 April 1999 of the Government on the basis of being suitable with the socio-economic request in each period and is implemented according to the following two steps:

- a) Registration for being granted investment license;
- b) To examine and approving the granting of investment license.

Pursuant to the Circular No. 01/2001/TT-NHNN providing guidance for foreign exchange control with respect to outward direct investments by Vietnamese enterprises dated 19 January 2001, in order to realize overseas investment projects, enterprises must open foreign currency deposit accounts at banks authorized to conduct foreign exchange operations. All transactions of transferring money abroad and into Viet Nam, which are related to the enterprises' overseas investment activities, must be effected through these accounts. Enterprises must register with the State Bank's branches in the

provinces or cities where they are headquartered for the opening of foreign currency accounts and the tempo of transfer of investment capital abroad. A dossier consists of: (i) An application for registration of accounts and transfer of investment capital abroad; (ii) A notarized copy of the business registration certificate; (iii) A notarized copy of the license for overseas investment, issued by a competent Vietnamese body; (iv) The written approval of investment by the host country (attached with a Vietnamese translation stamped and signed by the general director or director); (v) The document stating the tempo of investment capital contribution (inscribed in the charter or joint-venture contract or business cooperation contract already approved by a competent body of the investment-receiving country (if any) or the plan on the tentative tempo of investment capital contribution, made by the enterprise licensed to make investment abroad). Within five working days after the date of receipt of complete and valid dossiers, the State bank's provincial/municipal branches shall have to certify the account opening and registration of the tempo of transfer of investment capital abroad, which shall serve as basic for the Vietnamese investors to transfer their investment capital abroad via their accounts already opened at licensed bank for the execution of the investment projects.

Question 14

Paragraph 23: The text states that "Under certain circumstances, and subject to approval of the State Bank of Viet Nam, foreign invested enterprises were permitted to open foreign exchange accounts abroad."

- **By restricting commercial presence/investment, is this requirement restricting imports or exports of goods or services?**
- **The text should clarify circumstances under which foreign invested enterprises can open foreign exchange accounts abroad.**

Answer:

Pursuant to the Circular No. 04/2000/TT-NHNN dated 18 May 2001 providing guidance on foreign exchange controls applying to foreign invested enterprises and foreign parties to business cooperation contracts, foreign invested enterprises (FIEs) and foreign parties to Business cooperation contracts (FBPs) are entitled to open accounts at overseas banks to facilitate medium and long term overseas borrowings as stipulated in Point 2 Item I, Chapter V, Part II of the Circular No. 01/1999/TT-NHNN7 dated 16 April 1999 providing guidance on the implementation of the Decree No. 63/1998/ND-CP dated 17 August 1998 of the Government on foreign exchange controls. In addition to opening accounts as stated above, in special circumstances, FIEs and FBPs are permitted by the State Bank of Viet Nam to open accounts overseas to serve other activities based on the following conditions:

- (i) Enterprises which are subject to very important investment projects according to the Government's Programme;
- (ii) Enterprises invested under the types of BOT, BTO and BT that need to open overseas accounts to implement their commitments;
- (iii) Enterprises that are engaged in international trade including aviation, navigation, post and telecommunications, insurance and tourism and wish to open foreign currency accounts overseas to conduct clearing transactions in accordance with international customs; and
- (iv) Enterprises that are entitled to open overseas branches or representative offices and need to open accounts overseas to serve the operating purposes of such branches or representative office.

For other cases that are not stipulated above, based on the demand and the need for opening an overseas account, the Governor of the State Bank of Viet Nam will consider to settle.

Besides, investment projects under the stipulation of the Petroleum Law are entitled to open overseas accounts as stipulated in the Petroleum Law and within 15 days from the date of opening the overseas account, such account must be registered with the State Bank of Viet Nam – Foreign Exchange Control Department.

Question 15

Following up on the answer to Question 6 in WT/ACC/VNM/36, on what terms is the government willing to offer foreign exchange to preferred customers if commercial banks are unable to meet preferred customers' demand? By what criteria would a company qualify for this incentive? If Viet Nam is abolishing foreign exchange surrender and balancing requirements, why does it need to guarantee foreign exchange balancing to selected projects?

Answer:

Vietnamese legislation allows all domestic and foreign investors to access commercial banks to purchase foreign exchange to meet their business demand. The State's guarantee of foreign exchange balancing to selected important projects under the development plan of the Government is intended neither to create any discrimination between clients having demand for foreign exchange nor restrict any investor to access foreign exchange supplying sources.

In practice, the State's guarantee of foreign exchange balancing is applied to investors implementing projects of infrastructure construction, BOT, BTO or BT investment projects and other projects which have revenue collected mainly in Viet Nam Dong (domestic currency) during their business operation (for example: bridge and road toll collection, electricity supply, water supply, etc.). Such investment projects have huge demand for foreign exchange and often face risks in foreign exchange balancing to repatriate their capital, profit and other legal incomes. As a result, the Government, upon the request of investors, guarantees to balance foreign exchange needs of projects of these kinds in cases where commercial banks are not able to meet their demand. It should be noted that the guarantee provided by the Government of Viet Nam is not exceptional since such provision is very common in other countries as an incentive to encourage private sector (both domestic and foreign private investors) to participate in infrastructure development, especially when the State capital investment in this field remains limited. Similar recommendation is also offered by World Bank and UNCITRAL in their studies papers such as World Bank Technical Paper No. 399: Concession for Infrastructure - A Guide to Their Design and Award, A Joint Production of WB and Inter-American Development Bank, Washington D.C, 1998 and UNCITRAL Legislative Guide on Privately Financed Infrastructure Project, United Nations, 2001.

Question 16

The IMF is encouraging Viet Nam to move toward greater exchange rate flexibility and limiting foreign exchange interventions that would allow Viet Nam to strengthen its reserve position, better manage exchange rate risks, and facilitate adjustments to external shocks and rapid structural changes.

What is Viet Nam doing to respond to the IMF and reform its exchange rate regime?

Answer:

Viet Nam applied the managed floating exchange rate mechanism.

Question 17

We reiterate our request that Viet Nam either eliminate its fee on foreign exchange imports or bring it into conformity with WTO rules.

Answer:

Customs clearance fee on the importation and/or exportation of foreign currencies is merely a charge collected to cover services rendered by customs authorities regarding cross-border remittance monitoring and specified in Table of fee rates for customs clearance services.

In the coming time, Viet Nam plans to revise this fee by imposing a uniform rate to all imported/exported foreign currencies regardless of their amounts.

Question 18

Specific Drafting Suggestions: The discussion of Viet Nam's fee on foreign exchange imports should be moved from the section on fees to the section on Foreign Exchange and Balance of Payments.

Answer:

We suggest that this paragraph be put under the section on fees and charges.

Question 19

Elements of a Commitment: We suggest the following new text for a commitment:

23bis. The representative of Viet Nam stated that Viet Nam would implement its obligations with respect to foreign exchange matters in accordance with the provisions of the WTO Agreement and related declarations and decisions of the WTO that concerned the IMF. The representative further recalled Viet Nam's acceptance of Article VIII of the IMF's Articles of Agreement, which provided that "no member shall, without the approval of the Fund, impose restrictions on the making of payments and transfers for current international transactions". He stated that, in accordance with these obligations, and unless otherwise provided for in the IMF's Articles of Agreement, Viet Nam would not resort to any laws, regulations or other measures, including any requirements with respect to contractual terms, that would restrict the availability to any individual or enterprise of foreign exchange for current international transactions within its customs territory to an amount related to the foreign exchange inflows attributable to that individual or enterprise. The Working Party took note of these commitments.

Answer:

We would make our detailed comments on the suggested text for a commitment after having acquired full understanding of certain concepts such as "related declarations and decisions of the WTO that concerned the IMF" and "with respect to 'contractual terms'".

- **Investment Regime**

Question 20

In answer to Question 7 of WT/ACC/VNM/36, Viet Nam provided a list of business activities prohibited to foreign investors.

Please clarify what is meant by "reactionary cultural products," "superstitious items," "items which have an adverse effect on personal development," "chemical substances of high toxicity," "trading in explosives, toxic chemicals, and radioactive substances," "trading in toys which have an adverse effect on personal development or health of children or which have an adverse effect on personal development or health of children or which have an adverse effect on social order, security, and safety." Please provide lists of such products and items.

Answer:

Guidelines for defining "reactionary cultural products" have been provided in the reply to Question 5 of document WT/ACC/VNM/38. Also, paragraph 127 of document WT/ACC/SPEC/VNM/5 has provided a general concept for the determination of prohibited reactionary cultural products.

"Superstitious cultural products" could be defined, *inter alia*, as cultural products (inclusive of books, newspapers, magazines, tapes, discs, etc.) containing images and/or sound with displayed content not based on science or facts and are intended to make people blindly believe in mystical things, in stories of ghosts, devils and evil spirits, in delusion, etc. that are detrimental to public or national security.

"Cultural products which have an adverse effect on personal development" could be defined, *inter alia*, as cultural products containing images and/or sound with ill-spirit content that are detrimental to the Vietnamese people's morals, virtues, dignity, fine character and lifestyle, fine customs and habits, national cultural characteristics and human advancement. For example, cultural products containing pornography, violence, reactionary or anti-Viet Nam propagation, or superstitious cultural products, etc. could be claimed as cultural products which have an adverse effect on personal development.

"Toys which have an adverse effect on personal development or health of children or which have an adverse effect on personal development or health of children or which have an adverse effect on social order, security, and safety" could be defined, *inter alia*, as toys having unsafe shapes, dangerous usage functions and/or containing images, sound, content detrimental to children's morals, virtues, dignity, physical and intellectual development, adversely affecting children's education and aesthetic sense and/or social security and safety. For example, toys containing images, sound, actions describing brutal and murderous acts, stimulating lewdness, inciting crimes, social evils, reactionary or superstitious propagation, etc.; toys having violent functions and/or able to be used in fights, shootings of risk to human health and lives or damaging ecological environment, social safety, etc.

"Toxic chemical" constitutes any chemical which through its chemical action on life processes can cause death, temporary incapacitation or permanent harm to humans or animals. This includes all such chemicals, regardless of their origin or of their method of production, and regardless of whether they are produced in facilities, in munitions or elsewhere. Chemical substances of high toxicity include those specified in the list attached to the Circular No. 08/2001/TT-BCN dated 14 September 2001 of the Ministry of Industry as follows:

No.	Name of chemicals	Formula
1	24,5 T (Brochtox, Decamine)	
2	Aldrin (Aldrex, Aldrite...)	C ₁₂ H ₈ Cl ₆
3	Acid cyanic	HCN

No.	Name of chemicals	Formula
4	BHC (lindane)	$C_6H_6Cl_6$
5	Captan	$C_9H_8O_2NSCl_3$
6	Captofol	
7	Chlordane	$C_{10}H_6Cl_8$
8	DDT (dichlorodiphenyltrichloroethane)	
9	Dieldrin	$C_{12}H_8Cl_6O$
10	Endrin	$C_{12}H_8OCl_6$
11	Ethyl parathion	
12	Heptachlor	$C_{10}H_7Cl_7$
13	Hexachlorobenzene	C_6Cl_6
14	Isobenzene	
15	Isodrin	
16	Methamidophos	$CH_3OCH_3SPONH_2$
17	Methyl parathion	
18	Mirex	
19	Monocrotophos	$C_2H_{14}NO_5P$
20	Phosphamidon	$C_{10}H_{19}NO_5P$
21	Polychlorinated	
22	Strobane	
23	Toxaphene	$C_{10}H_{10}Cl_8$

Trading in explosives, toxic chemicals, and radioactive substances could be understood to cover trading in industrial explosive materials, explosives, and explosive components.

Question 21

Who decides whether an investment application fits these categories? Based on what criteria?

Answer:

All cultural products and toys of dangerous and/or pernicious nature as above defined are not permitted to be produced or traded in the domestic market. In the same manner, they are not allowed to be imported into Viet Nam. The Ministry of Culture and Information is the highest central authority responsible for evaluating and determining whether a cultural product fits these categories.

Ministry of Industry decides the fulfilment of above criteria in cases involving chemical substances of high toxicity and trading in explosives, toxic chemicals, and radioactive substances.

Question 22

The answer to Question 19 in WT/ACC/VNM/36 should be incorporated into the text in appropriate locations.

The definition of "conditional business sectors" as provided in WT/ACC/VNM/36 should be included in paragraph 25.

The response to Question 9 in WT/ACC/VNM/36 concerning the granting of business licenses should be reformatted in a table (inserted following paragraph 25) showing which ministry grants the license for each category of business.

The second and third sentences of paragraph 24 should be deleted and the relevant data harmonized with the information in the final sentence of paragraph 25, which should then be updated.

The first sentence of paragraph 25 should be deleted and paragraph 24 and 25 combined. The words "had therefore" should be deleted from the new second sentence of the combined paragraphs 24 and 25.

Paragraph 27 should be moved to paragraph 29, and the sentence "All investment projects, whether domestic or foreign, state-owned or privately-owned, must comply with Viet Nam's minimum wage regulations" should replace the sentence "Foreign Investment projects were subject to minimum wage regulations" in the text.

Current paragraphs 28 and 29 become new paragraphs 26 and 27.

The final two sentences in new paragraph 27 should be separated into a new paragraph 28.

The first sentence in new paragraph 32 should be modified to read "Some Members noted the granting of a tax preference upon the fulfilment of an export requirement to be contrary to WTO provisions, most notably Article 3 of the Agreement on Subsidies and Countervailing Measures, and requested that Viet Nam eliminate these measures by accession."

We recommend that the second sentence of this paragraph be deleted because it will be superseded by commitment language.

Further editing is likely once Viet Nam's new commercial and investment laws have been reviewed. We understand that Viet Nam is revising its policies on the acquisition of domestic enterprises. We suggest that the Working Party flag this issue for further review when Viet Nam has completed its policy revisions.

Answer:

We take note of these comments.

- **State-Owned and State Trading Enterprises**

Question 23

Please provide the Working Party with a copy of the 2003 SOE Law.

Answer:

Viet Nam has submitted an English version of the Law on State-owned Enterprises of 2003 to the Working Party as notified in document WT/ACC/VNM/38/Add.1.

Question 24

Question 25 in WT/ACC/VNM/36: Article XVII of the GATT requires State-Owned Enterprises to operate on commercial principles. What transparency requirements are contained in the 2003 Law on State-owned Enterprises? What accounting standards are applied to SOEs? Are SOEs required to publish annual reports? Are SOEs required to submit to an independent external audit? If so, does the law require the publication of independent auditors' reports? How do SOEs pay profits to the State?

Answer:

We note the requirements of Article XVII of the GATT concerning State Trading Enterprises.

Concerning State-owned enterprises, Viet Nam's Law on State-owned Enterprises of 2003 (SOEs Law) and relevant legal documents provide for requirements of transparency, accounting, auditing and financial reporting and profit utilization of SOEs as follows:

- State-owned companies are required to implement the regimes on accounting, auditing, and financial and statistical reporting in accordance with the Law and upon request by the State owner (Article 16.5, SOEs Law);
- State-owned companies are required to comply fully with regimes on management of capital, assets and funds; regimes on accounting and auditing in accordance with the Law; and to be responsible for the reliability and legality of their financial operation; to observe the regimes on annual financial reporting, making financial information public and providing information necessary for an reliable assessment of the efficiency of the company's operations (Article 18.4 and 18.5, SOEs Law);
- The annual financial statements of State-owned companies must be audited. The auditing regime shall be implemented in accordance with the laws on auditing (Article 89.1, SOEs Law);
- State-owned companies are required to make public their financial information within 120 days from the last day of the financial year to the State management authorities who are mandated to receive financial reports such as financial State agencies, taxation department, business registration agencies, statistics agencies), and to other concerned parties such as enterprise owners, enterprise employees, capital contributors, etc.;
- State-owned companies are required to comply with universally applied accounting standards as other enterprises. These accounting standards have been developed in conformity with international accounting standards; and
- State-owned companies pay profits to the State mainly via tax obligations, the rest is used as reinvestment to increase the State's assets at the State-owned companies.

Question 25

Question 27 in WT/ACC/VNM/36: Foreign firms often provide the products and services identified in the prospective list of sectors reserved to State-Owned Enterprises. Please clarify the need for the planned restrictions beyond the statement "private firms are not interested in or difficult to operate in some sectors." Why does Viet Nam believe that only the State can "ensure the essential needs for development of production and improvement of the material and spiritual life of ethnic minorities living in mountainous, remote, or distant areas?" Please better define the term "political books and newspapers" in order to distinguish them from other books and newspapers that are not restricted.

Answer:

The sentence "However, as private firms were not interested in or difficult to operate in some sectors, the State provided these goods and services" is misquoted in this section and should be inserted in the section on SOEs equitization to avoid misunderstanding.

The comment that "private firms are not interested in or difficult to operate in some sectors" is only intended in the context of determining criteria for restructuring of existing SOEs, and is not intended to restrict domestic private sector to participate in supply public goods and services. Therefore, it does not mean that only the State can ensure the essential needs for development of production and improvement of the material and spiritual life of ethnic minorities living in mountainous, remote, or distant areas. However, ensuring the essential needs for development of production and improvement of the material and spiritual life of ethnic minorities living in mountainous, remote, or distant areas is an important social policy objective and all enterprises are generally encouraged to participate in attaining this objective.

Again, there seems to be a misunderstanding here. As explained in the answer to Question 27 of WT/ACC/VNM/36, "the Government's draft Decree on the production and distribution of public goods and services only provides for restrictions to production and distribution in the field of national security and defence". Therefore, there is no restriction on "political books and newspapers" *vis-à-vis* other books and newspaper.

Question 26

What, if any, of the SOEs in these categories have state trading privileges and what are they?

Answer:

Viet Nam has made a notification on State Trading Enterprises. For detailed information, please see document WT/ACC/VNM/14/Add.1 of 31 October 2003.

Question 27

Question 29 in WT/ACC/VNM/36: Viet Nam's lists of companies and sectors in which the government "shall hold 100 per cent of capital" includes companies that satisfy several conditions, including a minimum amount of state owned capital, minimal annual state budget contribution, leadership "in the application of cutting edge technology or high technology," and belonging to certain sectors. Viet Nam's response explicitly states that the companies in question have to satisfy all these conditions. Viet Nam should clarify how the "cutting edge technology or high technology" condition applies to such listed sectors as "wholesale trade of foods," "printing of political books or newspapers," and "wholesale trade of petrol and oil."

Answer:

The condition of "application of cutting edge technology or high technology" is not appropriate and thus not applicable to companies operating in sectors such as "wholesale trade of foods", "printing of political books or newspapers," and "wholesale trade of petrol and oil". However, State owned companies operating in these sectors are still required to satisfy all other criteria as stipulated in the Decision No. 155/2004/QD-TTg.

Question 28

Question 29, Viet Nam stated that "the State shall hold 100 per cent of capital with respect to companies engaged in the following industries and sectors," and has also stated that these are sectors in which State-owned firms will never be equitized. Please clarify this in the text and indicate if there are any circumstances under which these sectors will be open to private and foreign participation.

Answer:

The list of companies issued in association with the Decision No. 155/2004/QD-TTg is intended to review and classify existing State owned companies with a view to implementing the plan of reform, of State owned companies including rearrangement, transformation of ownership, dissolution and bankruptcy of State owned companies. The classification of existing State owned companies in accordance with the criteria specified in this Decision is not meant to restrict or encourage other enterprises to participate or not to participate in any sector. Accordingly, Vietnamese private enterprises may still participate in a sector mentioned in this Decision. In the same line, this Decision is not intended to restrict the participation of foreign investors.

Nevertheless, production and supply of the public goods and services related to national defence and security must be undertaken by special State-owned enterprises directly serving the needs of national defence and security (for example, production of explosives and chemicals for national defence; production of radioactive substances; manufacture and repair of weapons, military equipment and specialized equipment used for national defence and security; equipment and technical documents and provisions of services for keeping confidentiality of information by encrypting techniques; etc.).

Question 29

In the same response to Question 29, Viet Nam describes the sectors and "companies in which the State holds more than 50 per cent of the total shares upon equitization." Please clarify in the text the terms under which private firms, including possibly foreign invested firms, may participate in these sectors. Viet Nam should provide a list of sectors in which the government will retain a majority stake in existing State-owned firms, but in which private firms may establish and compete.

Answer:

The list of companies issued in association with the Decision No. 155/2004/QĐ-TTg is intended to review and classify existing State owned companies with a view to implementing the plan of reform, of State-owned companies including rearrangement, transformation of ownership, dissolution and bankruptcy of State-owned companies. The classification of existing State-owned companies in accordance with the criteria specified in this Decision is not meant to restrict or encourage other enterprises to participate or not to participate in any sector. Accordingly, Vietnamese private enterprises may still participate in a sector mentioned in this Decision. In the same line, this Decision is not intended to restrict the participation of foreign investors.

Nevertheless, production and supply of the public goods and services related to national defence and security must be undertaken by special State-owned enterprises directly serving the needs of national defence and security (for example, production of explosives and chemicals for national defence; production of radioactive substances; manufacture and repair of weapons, military equipment and specialized equipment used for national defence and security; equipment and technical documents and provisions of services for keeping confidentiality of information by encrypting techniques, etc.).

Question 30

Question 30 in WT/ACC/VNM/36: Viet Nam should provide information responsive to the request for state share of output, exports, and imports.

Answer:

Statistics on industrial production, import and export values of enterprises by forms enterprises (including SOEs) have been provided in Annex 5 of document WT/ACC/VNM/36.

Question 31

Question 33 in WT/ACC/VNM/36: Viet Nam should clarify its response to this question that although no restrictions on fertilizer production exist, only state owned firms currently produce fertilizer in Viet Nam because of the "capital intensive characteristics of the industry." Please disclose whether any private firms have attempted to enter the industry, and outline how a private or foreign firm could establish in this sector.

Answer:

Viet Nam's comment on this issue just mentions the capacity of fertilizer production and trading of Vietnamese private sector. In fact, some foreign investors have been granted investment licenses to produce fertilizer and distribute their domestically-produced fertilizer in Viet Nam.

It should be reaffirmed that no restrictions are applied on the participation of organizations, individuals to the production of fertilizers. The Government of Viet Nam promulgated the Decree No. 113/2003/ND-CP dated 7 October 2003 on the management of fertilizer production and trading. The Decree stipulates that the production, processing, exportation, importation, trade, experiment and state administration of fertilizers aim to protect legitimate rights of fertilizer producer and consumer organizations and individuals.

Due to numerous products and quality levels, investment demand for varieties of fertilizers differ. Therefore, the participation of enterprises from different ownership in fertilizer production in Viet Nam may differ:

- Since the production of nitrogenous fertilizer is capital-intensive that require very long capital-return period, only state-owned enterprises have invested in the production in Viet Nam; and
- The production of NPK fertilizers enjoys the participation of different economic entities, particularly private and foreign invested enterprises. Currently, there have been some French and Japanese enterprises that have participated in such production in Viet Nam.

Question 32

Question 34 in WT/ACC/VNM/36: We appreciate the guidance on the laws that govern SOE capital investments. We would appreciate receiving copies of the relevant decrees. By what process do SOEs make operational purchases?

Answer:

Viet Nam has provided Decrees No. 52/1999/ND-CP of 8 July 1999, and No. 88/1999/ND-CP of 1 September 1999 to the Working Party in document WT/ACC/VNM/38/Add.1. An unofficial English translation of Decrees No. 12/2000/ND-CP of 5 May 2000 and No. 07/2003/ND-CP of 30 January 2003 are available through WT/ACC/VNM/39/Add.1.

SOEs make their purchases and sales just like other enterprises. Accordingly, SOEs have the rights to look for markets and customers; to make their own decisions on the prices for their products and services, except for the public utility products and services and other products and services for which the prices are stipulated by the State (this provision is applied to all enterprises regardless of the ownership).

Question 33

Annex 2 in WT/ACC/VNM/36/add.1: Please create a new table in Annex 2 identifying goods reserved to state trading and indicating any transitions to full trading rights. Please make sure that the Table identifies the goods by 8-digit HS-Code, full product description, and the respective STEs that possess special trading privileges.

Answer:

Please refer to Annex II of this document for the detailed description of goods in HS 8-digit categories subject to trading rights transitional period. This Annex also includes the rationale for reserving transitional periods for each group of commodities and the list of STEs sectors.

Question 34

Specific Drafting Suggestions:

We recommend that the texts of the separate sections on State-Owned Enterprises and State Trading Enterprises be combined in one section. The information provided on privatization should be placed in a separate section.

Answer:

In principle, we do not oppose to the merging of the two sections on State-owned enterprises and State Trading Enterprises. We are, however, concerned with how the commitment language would develop from that combination.

As such, we would reserve to later come back to the question of combining the two sections, depending on how the commitments would eventually develop. For the time being, we can discuss on the combined section, but reserve the right to come back later on this depending on the developments in the discussion on the commitment language.

Question 35

Elements of a Commitment:

We would like to propose the following commitment language for the new combined section on State-Owned and State-Trading Enterprises:

XX. "The representative of Viet Nam further confirmed that it would ensure that all state-owned, state-invested, including equitized firms in which the State retains an equity stake, and state trading enterprises would make purchases and sales based solely on commercial considerations, e.g., price, quality, marketability and availability, and that the enterprises of other WTO Members would have an adequate opportunity to compete for sales to and purchases from these enterprises on non-discriminatory terms and conditions. In addition, the Government of Viet Nam would not influence, directly or indirectly, commercial decisions on the part of state-owned, state-invested, or state trading enterprises, including on the quantity, value or country of origin of any goods purchased or sold, except in a manner consistent with the WTO Agreement. The Working Party took note of these commitments."

XX. "The representative of Viet Nam confirmed that, without prejudice to Viet Nam's rights in future negotiations in the Government Procurement Agreement, all laws, regulations and measures relating to the procurement by state-owned, state-invested, or state trading enterprises of goods and services for commercial sale, production of goods or supply of services for commercial sale, or for non-governmental purposes would not be considered to be laws, regulations and measures relating to government procurement. Thus, such purchases or sales would be subject to the provisions of Articles II, XVI and XVII of the GATS and Article III of the GATT 1994. The Working Party took note of this commitment."

Answer:

We can accept the following text of commitment language:

The representative of Viet Nam confirmed that his Government would apply its laws and regulations governing the trading activities of State-owned enterprises and State Trading enterprises with special or exclusive privileges in full conformity with the provisions of the WTO Agreement, in particular Article XVII of the GATT 1994 and the Understanding on that Article and Article VIII of the GATS. He further confirmed that Viet Nam would notify any enterprise falling within the scope of Article XVII, including those referred to in Table 4. The Working Party took note of these commitments.

The representative of Viet Nam further confirmed that it would ensure that all state-owned, state controlled, including equitized firms in which the State retains a major equity stake, and state trading enterprises would, having due regard to other provisions of the WTO, make purchases and sales based solely on commercial considerations, e.g., price, quality, marketability and availability, and that the enterprises of other WTO Members would have an adequate opportunity, in accordance with customary business practices, to compete for participation in sales to and purchases from these enterprises on non-discriminatory terms and conditions as prescribed in the WTO Agreement. In addition, the Government of Viet Nam would not influence, directly or indirectly, commercial decisions on the part of state-owned, state-controlled, or state trading enterprises, including on the quantity, value or country of origin of any goods purchased or sold in a manner inconsistent with the WTO Agreement. The Working Party took note of these commitments.

- **Privatization**

Question 36**Requests for Information or Clarifications That Should Be Reflected in the Text:**

Question 24 of WT/ACC/VNM/36: Please define in operational terms the meaning of "controlling" or "special" shares. We understand that Vietnamese law grants veto rights over a range of operational decisions to shareholders with a 35 percent or greater stake in a firm. Please identify which law provides this privilege.

Answer:

The Law on State-owned Enterprises of 1995 provides for "special" shares retained by the State in certain enterprises where it does not possess controlling equity but still has rights to decide certain important issues in accordance with enterprises' charter. However, it should be emphasized that since 1 July 2004, the Law on State-owned Enterprises of 1995 has been superseded by the Law of State-owned Enterprises of 2003.

- The Law on State-owned Enterprises of 2003 defines that enterprise in which the State holds the controlling shareholding or controlling capital contribution means an enterprise in which the State's shareholding or capital contribution accounts for more than 50 per cent of the charter capital, and the State holds the right to control such enterprise.

Pursuant to Article 3.8 of Law on State-owned Enterprises of 2003, controlling right in an enterprise means the right to decide the operational charter of the enterprise; to appoint, suspend or dismiss key managerial positions in the enterprise; and to organize management (decide the structure of enterprise with the Board of Management or without) and make important management decisions of such enterprise.

There is no longer any provision of "special" shares held by the State in Vietnamese legislation.

Viet Nam does not have any law that grants veto right over a range of operational decisions to shareholders with a 35 percent or greater stake in a firm:

- Article 77 of the Enterprise Law stipulates that the General Meeting of Shareholders shall adopt resolutions within its authority by voting during its sessions or by collecting written opinions;
- A resolution of the General Meeting of Shareholders shall be adopted by voting during its session if approved by no less than 51 per cent of total votes of all participating shareholders. The specific ratio shall be stipulated in the company's Charter. In case a resolution of the General Meeting of Shareholders proposes to be approved by collecting written opinions, such resolution shall be adopted if approved by no less than 51 per cent of the total votes;
- With respect to resolutions involving type of shares and a number of shares to be issued under each type, amendments and supplements of the company's Charter, the reorganization and dissolution of the company, or investment and sale of 50 per cent or more of the total value of assets recorded in the company's accounting books, a resolution of the General Meeting of Shareholders shall be adopted by voting during its session if approved by no less than 65 per cent of total votes of all participating shareholders.

As a result, only a group of shareholders representing no less than 51 per cent of total votes of all shareholders participating in a session of the General Meeting of Shareholders and/or no less than 65 per cent in certain cases as above specified has veto rights over a resolution of the General Meeting.

Shareholders whether in person or in group who hold, within at least 6 consecutive months, at least 10 per cent of ordinary shares or a lesser share as stipulated in the company's Charter shall be entitled to nominate representatives to participate in the Board of Management and Control Board (if any); to request convocation of the General Meeting of Shareholders; to read and receive copies or extracts of lists of shareholders entitled to participate in sessions of the General Meeting of Shareholders; and to have other rights as stipulated in the Enterprise Law and the company's Charter.

Question 37

In its response to Question 45, Viet Nam indicated that the market determines the value of shares in the equitization process. In its reply to Question 42, Viet Nam indicated that employees may purchase shares of an equitizing SOE at "40 per cent of average auction price and strategic domestic investors are entitled to purchase up to 20 per cent of shares available for sale at 20 per cent of average auction price." "... After deducting the shares held by the State and the shares sold at discount to employees and strategic domestic investors ...," the balance of shares is publicly auctioned.

In the interest of clarity and transparency, we suggest that the draft report contained a step-by-step description of the equitization process from beginning to end.

Answer:

Pursuant to the Government Decree No.187/2004/ND-CP dated 16 November 2004 on transformation of State-owned enterprises into shareholding companies, employees in an equitized enterprise are entitled to preferential purchases of shares at discount of 40 per cent of average auction prices and strategic domestic investors are entitled to preferential purchases up to 20 per cent of number of shares for sale at discount of 20 per cent of average auction prices.

Step-by-step process of transformation of State-owned enterprises into shareholding companies has been elaborated in Annex 1 attached to the Circular No. 126/2004/TT-BTC of the Ministry of Finance dated 24 December 2004 providing for guidelines to implement the Government Decree No. 187/2004/ND-CP and could be summarized as follows:

Step 1: Preparing equitization plan

- (a) The body making the decision on equitization establishes a steering committee for equitization and assistant group of the steering committee.
- (b) Preparing legal files and documents on the establishment of enterprise; assets; liabilities; uncompleted capital construction works; long-term investment capital in other enterprises; financial reports; tax reports; list of permanent employees, classification of employees by types of labour contracts; estimates of equitization expenses.
- (c) Dealing with financial issues and carrying out the valuation of the enterprise. The assistant group of the steering committee and enterprise coordinate with consulting organizations to organize an inventory and classify assets, finalize financial and tax issues, coordinate with relevant agencies to settle financial problems; organize valuation of enterprise's assets.
- (d) Finalizing an equitization plan.

Step 2: Holding the sale of shares

- (a) The steering committee decides the auction method: (i) Auction directly at the enterprise; (ii) Auction at an intermediary financial organization; (iii) Auction at a Securities Trading Centre.
- (b) Selling shares.
- (c) Gather and report the results of share sales to the body making the decision on equitization.
- (d) The body making the decision on equitization adjusts the equitization plan.

At this step, only is the number of shares subject to preferential sales to employees and domestic strategic investors determined; preferentially discounting prices shall be contingent upon the average publicly auctioned prices.

Step 3: Completing the conversion of the enterprise into a shareholding company

- (a) The steering committee and assistant group hold the first General Meeting of shareholders to adopt company's Charter; to elect members of the Board of Management, Control Board and management apparatus.
- (b) The Board of Management conducts business registration.
- (c) Make financial report at the time of business registration; finalize taxation obligations and equitization expenses; report to the body making the decision on equitization; pay proceeds from equitization to relevant bodies.
- (d) The shareholding issue shares to its shareholders.
- (e) Introduce the shareholding company.
- (f) Carry out the hand-over between the enterprise and the shareholding company.

The above steps must be completed within a maximum period of nine months. In a case of failure to complete within such period, the body making the decision on equitization shall be responsible for any extra expenses incurred.

Question 38

Please include an explanation of how the market determines asset valuation of equitized firms. In particular, how is the "average auction price" of an equitizing firm is determined if the public auction occurs only after shares have been sold at discount from that price to employees and domestic strategic investors.

Answer:

Currently, asset valuation of equitized enterprises is based on market value as follows:

- Asset valuation of equitized enterprise is conducted by valuation agencies such as auditing companies, securities companies, value appraisal organizations, domestic and foreign investment banks which have full competence of asset valuation; and
- Asset valuation follows market principle by employing either asset valuation method or discounting cash flow method or both.

Sales of equitized enterprise's shares are conducted via public auctions which take place before shares are sold to employees and strategic investors at preferential discounting prices. Average auction price is determined by averaging the successful auction prices of different auction sessions. Successful average auction prices are the basis to subsequently determine preferentially discounting prices of shares sold to employees in the enterprise and domestic strategic investors.

Question 39

Paragraph 46 of the Draft Report states that "for equitized Group 2 and Group 3 enterprises, the total value of shares sold to foreigners should not exceed 30 per cent of a joint-stock company's registered capital. An auction would be required if the value of the shares bought by foreigners exceeded this threshold, unless the company would be transformed into an FDI enterprise and thus governed by the Law on Foreign Investment."

Please explain these two sentences more thoroughly, e.g., An auction for what? How would an equitized firm be "transformed" to an FDI enterprise?

Answer:

Pursuant to the Government Decree No.187/2004/ND-CP on transformation of State-owned enterprises into shareholding companies, the total value of shares of a shareholding company that foreign investors are allowed to purchase should be no more than 30 per cent of the company's charter capital. In cases where a number of foreign investors register to contribute capital or purchase shares of a company that the aggregate value of shares sought to purchase exceeds the limit of 30 per cent of the company's charter capital, in order to maintain the statutory 30 per cent cap, an auction of shares shall be conducted by the company to decide which foreign investors will be selected for share purchase or capital contribution.

The second phrase "unless the company would be transformed into an FDI enterprise and thus governed by the Law on Foreign Investment" in the sentence in question must have been a translation error and thus should be deleted to avoid misunderstanding. The meaning of this sentence should be understood as in cases where foreign investors wish to contribute capital directly with the value exceeding 30 per cent of the equitized enterprise's charter capital, they must make their investments in accordance with provisions of the Law on Foreign Investment and relevant regulations on investment sectors and forms once reaching an agreement of direct investment with the enterprise itself. Procedures to establish, operate and manage such enterprises must follow general procedures applicable to foreign invested projects.

Question 40

With respect to the information provided in response to Question 43 of WT/ACC/VNM/36, would a foreign investor be able to increase its ownership above the current 30 per cent limit after the initial distribution of shares? If so, how would that be accomplished?

Answer:

Pursuant to Article 3 of the Prime Minister's Decision No. 36/2003/QD-TTg dated 11 March 2003 on the issuance of Regulation on Capital contribution and purchase of shares by foreign investors in Vietnamese enterprises and the Prime Minister's Decision No. 146/2003/QD-TTg dated 17 July 2003 on percentage of participation of foreign parties in securities market of Viet Nam, the maximum level of capital contribution and purchase of shares by any one or more foreign investors in a Vietnamese enterprise, including equitized enterprises, is capped at 30 per cent of the charter capital of the Vietnamese enterprise and remains valid even after the initial distribution of shares (i.e. foreign investors are not allowed to increase their ownership above the current 30 per cent limit after the initial distribution of shares).

Once the common Investment Law enters into force, the Government shall issue a Decree to provide for detailed regulations on foreign investors' share purchases in Vietnamese enterprise, taking into due account Viet Nam's WTO accession commitments.

Question 41

We appreciate the detailed response to Question 46 of WT/ACC/VNM/36. In that reply, Viet Nam indicates that "the Government does not directly intervene in enterprises' business operations but confines its role to managing the State equity in enterprises, supervising and evaluating the efficiency of the State capital employment in SOEs in accordance with uniform and consistent criteria."

What does "management of the State equity" entail? Is this a portfolio adjustment exercise, or does it involve contact and guidance to the firm's CEO or directors?

Answer:

"Management of the State equity in enterprises" means that the State exercises its rights as the owner of the State capital in State owned companies, State shareholding companies, one State member limited liability companies. The State manages its equity in enterprises in the same manner as other capital owners of shareholding companies, limited liability companies, i.e. the State exercises its owner's rights such as appoint representative to be a member of the Board of Management, to supervise and examine business performance of State companies, etc. in accordance with the company's Charter. Only the member of the Board of Management who is appointed to be Managing Director by the Board of Management is entitled to manage the State companies' business activities. The State agencies are not allowed to intervene in business operation and management of companies.

Question 42

What are the "uniform and consistent criteria" applied by the state? How does the government obtain the information needed to evaluate the efficiency of State capital employment in SOEs? Is that information available to other shareholders? Is it available to the public?

Answer:

The Prime Minister has issued the Decision No. 271/2003/QD-TTg dated 31 December 2003 on the issuance of Regulation on supervision and evaluation of the business efficiency of State-owned enterprises, wherein forms of supervisions and criteria for evaluation of enterprises' business efficiency and for classification of enterprises have been provided for.

The system of criteria used to evaluate SOEs performance includes:

- Revenues and other incomes;
- Profit and profit ratio versus State capital;
- Outstanding liabilities and ability to pay due debts; and
- Compliance with regimes, policies and legislation on taxation and payments to the budget, credit, insurance, environment protection, labour, salary and wage, accounting, auditing and financial regimes and regimes of financial reporting and other reporting.

The supervision, examination and evaluation of business efficiency of State owned companies are not for the purpose of intervention in these enterprises' business operation and management.

Question 43

"The state is responsible to assure enterprises' autonomy and self-accountability in conducting business." How does the State accomplish this?

Answer:

The State assures enterprises' autonomy and self-accountability in conducting business in the following manner:

- Like private investors, the State manages and supervises enterprises only in terms of the efficiency of investment capital, ratio of profit versus State investment capital. The State is not allowed to arbitrarily transfer enterprises' capital and assets but must respect enterprises' charter;
- The State authorities do not directly select, appoint, relieve from duty, dismiss and decide salary of Director, Vice Director(s), Chief Accountant of enterprises. The responsibility of such action rests upon the Board of Management of enterprises. Director, Vice Director(s), Chief Accountant of enterprises are not State employees;
- The State does not intervene in business operations of enterprises. Rights and obligations of State-owned enterprises have been specified in Article 15 and 16 of the Law on State-owned enterprises of 2003. The State is responsible to assure enterprises' capability in (i) organizing their management apparatus in accordance with business requirements; (ii) modifying their asset structure for business development and technology renovation; (iii) conducting business according to their capacity and market demand; (iv) using their capital and assets to conduct business; (v) achieving legitimate benefits from such capital and assets; (vi) leasing or purchasing part or the whole of other companies; (vii) using State invested capital in the company or capital raised from market to establish shareholding companies or limited liability companies. Other rights of enterprises include the right to make investment decisions in accordance with the Decree No. 52/1999/ND-CP dated 8 July 1999 and Decree No. 07/2003/ND-CP dated 30 January 2003, etc.
- Enterprises are self-responsible for their own business operation with respect to: (i) fulfilling their taxation obligations to the State on equal footing as private enterprises; (ii) conducting business profitably, utilizing efficiently the State invested capital, ensuring the ratio of profit over State invested capital as assigned by the owner; (iii) ensuring the efficiency of capital utilization to establish new enterprises. The Government Decree No. 199/2004/ND-CP dated 3 August 2004 provided for an enterprise's self-liability for debts and other asset obligations within the extent of the State capital invested therein. The Government conducts periodic and unscheduled assessments of SOEs business efficiency and insists on subjecting SOEs to bankruptcy regulations when they are bankrupt according to the Law on Bankruptcy.

Question 44

We also understand that Viet Nam intends to consolidate ownership of State shares of equitized firms into one government holding company. Please describe the characteristics of this new company and the process by which it will assume ownership of the shares, as well as an estimated timetable for its formation.

Answer:

The Corporation for State Capital Investment and Trading (SCIC) has been recently established to manage, invest and trade using the State capital in enterprises pursuant to the Prime Minister's Decision No. 151/2005/QĐ-TTg dated 20 June 2005. The charter capital of SCIC at the time of establishment is VND 5 trillion. SCIC's functions include (i) to acquire and exercise rights of a representative of the State ownership in one State member limited liability companies, limited liability companies with at least 2 members, shareholding companies transformed from independent or newly established SOEs; (ii) to invest and trade in State capital in economic fields at home and abroad in forms of new establishments, capital contribution to set up joint venture or associations, equity contribution in shareholding companies, purchase part or the whole of other enterprises, purchase and sale of shares, bonds and financial instruments in capital markets and security markets. At present, the organization and operation regulations for SCIC are under preparation.

Question 45

Please describe Viet Nam's plans to equitize State Owned Commercial Banks.

Answer:

Pursuant to the Government Decree No. 187/2004/ND-CP on transformation of State-owned enterprises into shareholding companies, State-owned commercial banks are also subject to equitization plan. A pilot equitization of commercial banks shall be applicable to the Bank for Foreign Trade of Viet Nam (VIETCOMBANK) and Mekong Delta Housing Bank (MHB). The Prime Minister has permitted VIETCOMBANK to issue convertible bonds to increase its capital and further develop its equitization plan. The equitization plan of MHB is in preparation.

Question 46

Elements of a Commitment:

We note that the commitment language we have proposed for the SOE/STE section applies also to equitized firms. This should be cross-referenced here. Additional commitment language here may be necessary as we complete our review of Viet Nam's privatization policies.

Answer:

We will have further comments as this section and the section on SOEs/STE develop.

- **Pricing Policies**

Question 47

Referring to paragraph 53 of the draft Working Party report, how was the system of price guidance instituted in 1999 phased out? Could the government issue similar guidance now? If so, how?

Answer:

The issuance of the Prime Minister's Directive in early 1999 which is a provisional guidance is merely intended to prevent businesses from abruptly raising their prices unreasonably by taking advantage of the introduction of VAT in Viet Nam at that time. It does not restrict businesses to incorporate VAT into their selling prices. As a temporary document, it is no longer in effect.

Question 48

Are private sector companies, including foreign owned, allowed to set prices, including the incorporation of VAT payments into the price, according to the dictates of the market?

Answer:

Yes.

Question 49

Referring to Paragraph 52, delete phrase "It had not been applied to Viet Nam's trade on a regular basis" to avoid redundancy in the final sentence.

Answer:

We can go along with this comment.

Question 50

Elements of a Commitment: Per response to Question 53 in WT/ACC/VNM/36, please remove the brackets in paragraph 56 in WT/ACC/SPEC/VNM/5 around the phrase "and any changes in its Official Gazette."

Answer:

We agree with this suggestion.

- **Competition Policy**

Question 51

We would like to see a summary of the new Competition law, including the key elements of the answer to Question 56 of WT/ACC/VNM/36, included in the text.

Answer:

Viet Nam's Competition Law (hereinafter referred to as the Law) was adopted by the National Assembly on 3 December 2004 and became effective as of 1 July 2005. The Law contains 6 chapters and 123 articles providing for anti-competitive acts, unfair competition acts, procedures for settling competition cases and measures to handle violations of the Law (Article 1).

1. **Scope of application**

The Law applies to business organizations and individuals, also including those producing, supplying products, providing public-utility services, and those operating in the State-monopolized sectors and domains, and foreign enterprises operating in Viet Nam. In addition, the Law shall be applicable to trade associations operating in Viet Nam (Article 2). Consequently, both state-owned enterprises and

private as well as foreign enterprises are subject to the application of this Law. Private and/or equitized firms can seek redress for anti-competitive acts by any other enterprises, including state-owned enterprises.

2. Recognition of right to business competition

The Law recognizes enterprises' freedom to competition within the legal framework and the State protects the lawful right to business competition (Article 4). To ensure such protection, the Law only prohibits anti-competitive acts and unfair competition acts as well as the order, procedures and measures for handling competition cases, it also provides for acts that the State management agencies are prohibited from performing. For example, State management agencies are prohibited from forcing enterprises, organizations or individuals to buy, sell goods, provide services to enterprises which are designated by these agencies, except for goods and services in the State-monopolized domains or in emergency cases prescribed by laws, discriminating between enterprises, forcing trade associations or enterprises to align with one another with a view to precluding, restricting or preventing other enterprises from competing on the market and performing any other acts that prevent lawful business activities of enterprises.

3. Prohibited acts

The Law prohibits both anti-competitive acts and unfair competition acts.

3.1 Anti-competitive acts:

Anti-competitive acts prohibited by the Law include anti-competitive agreements, abuse of dominant and monopoly position in the market and economic concentration.

Anti-competitive agreements prescribed by Article 8 consist of:

- Agreements on directly or indirectly fixing goods or service prices;
- Agreements on distributing outlets, sources of supply of goods, provision of services;
- Agreements on restricting or controlling produced, purchased or sold quantities or volumes of goods or services;
- Agreements on restricting technical and technological development, restricting investments;
- Agreement on imposing on other enterprises conditions on signing of goods or services purchase or sale contracts or forcing other enterprises to accept obligations which have no direct connection with the subject of such contracts;
- Agreements on preventing, restraining, disallowing other enterprises to enter the market or develop business;
- Agreements on abolishing from the market enterprises other than the parties of the agreements; and
- Convincing to enable one or all of the parties of the agreement to win bids for supply of goods or provision of services (Article 8).

The first 6 anti-competitive agreements above shall be prohibited if parties to those agreements have a combined market share of 30 per cent or more in the relevant market, subject to exemptions prescribed by Article 10. The last 3 anti-competitive acts shall be per se prohibited.

Abuse of dominant position in the market prohibited by the Law includes:

- to sell goods, providing services at prices lower than the aggregate costs in order to eliminate competitors;
- to impose irrational buying or selling prices of goods or services or fixing minimum re-selling prices causing damage to customers;

- to restrict production, distribution of goods, services, limit markets, prevent technical and technological development, causing damage to customers;
- to impose dissimilar commercial conditions in similar transactions in order to create inequality in competition; to impose conditions on other enterprises to conclude goods or services purchase or sale contracts or to force other enterprises to accept obligations which have no direct connection with the subject of such contracts; and
- to prevent new competitors from entering the market (Article 13).

Abuse of monopoly position in the market prohibited by the Law include those acts that enterprises, groups of enterprises holding a dominant position in the market are forbidden from performing and those acts of imposing unfavourable conditions on customer and abusing the monopoly position to unilaterally modify or cancel the contracts already signed without plausible reasons (Article 14).

Economic concentration consists of merger, amalgamation, acquisition, joint-venture and other acts of economic concentration under the Law. Economic concentration shall be prohibited if the combined market shares of enterprises participating in economic concentration account for over 50 per cent in the relevant market, except for cases specified as exemptions in Article 19 of this Law or the case where enterprises, after implementing economic concentration, are still of small or medium size as prescribed by law (Article 18). The exemptions comprise of the cases that one or more of the participants in economic concentration is/are in danger of dissolution or bankruptcy; and the economic concentration has an effect of expanding export or contributing to socio-economic development, technical and technological advance.

Notification of the proposed economic concentration shall be required before the proposal is implemented, if enterprises participating in economic concentration have combined market shares of between 30 and 50 per cent in the relevant market, except for the cases where enterprises, after implementing economic concentration, are still of small or medium size as prescribed by law.

The specific procedures for notification of proposed economic concentration as well as application for exemptions are set out in Article 21 to 38.

3.2 Unfair competition acts

Chapter III of the Law prescribes 10 unfair competition acts which include:

- Misleading indications;
- Infringement upon business secrets;
- Constraint in business;
- Discrediting other enterprises;
- Disturbing business activities of other enterprises;
- Advertising for the purpose of unfair competition;
- Sale promotion for the purpose of unfair competition;
- Discrimination by associations;
- Illicit multi-level sale; and
- Other unfair competition acts according to the criteria determined in Clause 4, Article 3 of the Law and prescribed by the Government.

4. Procedures for handling competition cases

Organizations and individuals including private and/or equitized enterprises can, under Article 58(1), file a complaint directly to Competition Administration Agency when they believe that their legitimate rights and interest are infringed upon by acts in violation of the Law which also include anti-competitive acts by state-owned enterprises.

The Competition Administration Agency is responsible for initiating a preliminary investigation (Article 59 and 86). The Head of the Competition Administration Agency will make a decision on an official investigation if there is evidence on the violation of the Competition Law or otherwise suspend the investigation (Article 87). An investigation can be also conducted by the Competition Administration Agency without any complaint if it detects signs of violations of the Law.

If the competition case is concerned with violations of provisions on unfair competition acts, the Competition Administration Agency will make a decision on resolution of the case.

If the competition case is concerned with violations of provisions on anti-competitive acts, the Competition Administration Agency will, upon the completion of the investigation, transfer the investigation report and file to the Competition Council (Article 93).

The Competition Council will set up a Tribunal for handling the competition case and the Tribunal will decide either to open an hearing, or to return the file to the Competition Administration Agency for supplementary investigation, or suspend the handling of that specific competition case (Article 99 and 100).

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

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

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

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

An effective decision on resolution of competition case shall be enforced by relevant competent agencies under their authorities. The provincial-level civil judgment enforcement agencies in the province or centrally-run cities, where parties obliged to comply with the decisions are headquartered, resided or their property is located, organize the enforcement of the decisions in relation to property.

III. FRAMEWORK FOR MAKING AND ENFORCING POLICIES

Question 52

Requests for Information or Clarifications That Should Be Reflected in the Text:

The Report text should be updated and expanded to reflect Viet Nam's enactment of the Law on the Conclusion, Accession, and Implementation of International Treaties and its terms relevant to implementation of WTO accession commitments.

Answer:

The Law on Conclusion, Accession and Implementation of International Treaties was adopted on 14 June 2005 and will come into effect on 1 January 2006.

Under Article 3.6, The Socialist Republic of Viet Nam shall comply with international treaties to which the Socialist Republic of Viet Nam is a party to.

Article 6 regulates the implementation of international commitments made by Viet Nam, including commitments within the WTO framework, as follows:

1. International treaties shall prevail in cases of conflicts between the provisions of national legal documents and the provisions of international treaties that Viet Nam has signed or acceded on the same subjects.
2. The promulgation of the legal documents should ensure that no obstacles are created for the implementation of international treaties on the same subjects to which Viet Nam is a party.
3. Based upon the requirement, contents and nature of the international treaties, the National Assembly, the State President and the Government would make the decisions on acceptance to be bound by such international treaty in combination with the decisions on the direct application of the whole or parts of international treaties to agencies, organizations, and individuals if the provisions of such international treaty are clear and detailed enough for implementation; and also make the decision or proposal for amendment, supplement, repeal or promulgation of legal normative documents to implement international treaties.

Article 69: International treaties which entered into force with respect to the Socialist Republic of Viet Nam shall be published on the "Official Gazette" of the Socialist Republic of Viet Nam and the "Series of International Treaties".

Article 71: The recommending agency shall submit to the Government for decision on the plan for implementation of the international treaty, including Schedule for implementation, recommendations on amendment, supplement, repeal or promulgation of legal documents for ensuring the implementation of the international treaty concluded or acceded to.

Article 73: The relevant agencies and organizations shall be responsible to carry out the plan upon the decision made by the Prime Minister of the Government on the plan of implementation of an international treaty.

Article 97: Agencies, organizations, individuals shall be responsible for strictly observing international treaties to which Viet Nam is a party.

Question 53

We would appreciate receiving copies of the draft amendments to the Law on Complaint and Denunciation related to the issue of administrative appeal.

Answer:

An unofficial English version of the drafted Law on Amendment of and Supplement to Some Articles of the Law on Complaint and Denunciation has been submitted to the Secretariat (WT/ACC/VNM/39/Add.1).

Question 54

Paragraphs 66 and 67 of the draft report should be revised based on the answer to Question 61 of WT/ACC/VNM/36.

Answer:

We agree with this comment.

Question 55

Viet Nam responded to Question 64 of WT/ACC/VNM/36 that the 2004 Civil Procedures Code had set 15 days as the deadline to appeal a court of first instance decision. The international norm for filing appeals is 30-45 days.

Please describe the process for filing an appeal of a court of first instance decision.

Answer:

Under the 2004 Civil Procedures Code, concerned parties or their representatives and the body or organization initiating a legal action shall have a right to make an appeal application against a judgment or a decision of the Court of first instance to request to upper court to directly resolve the matter in accordance with the appellate procedure.

The appeal application shall include the following main contents:

- The date of the appeal application;
- Name and address of the appellant;
- The part of the judgment or decision of the Court of first instance which has not yet been legally enforceable and is being appealed against;
- The grounds for the appeals and the request of the appellant; and
- The signature or finger-print of the appellant.

The appeal application shall be submitted to the Court of first instance which has made the judgment or decision which is being appealed against; where the appeal application is submitted to the appellate Court, such Court shall forward it to the Court of first instance to enable it to carry out necessary procedures and forward the file of the case to the appellate Court. The appeal application shall be accompanied by any additional documents and evidences, if any, in order to prove that his or her appeal is well grounded and lawful.

Question 56

Has Viet Nam given any thought to lengthening the period to file an appeal to a period more consistent with international norms?

Answer:

Concerning the time limit for lodging an appeal, under the 2004 Civil Procedures Code, the time limit for lodging an appeal against a judgment of the Court of first instance shall be fifteen (15) days as from the date of pronouncement of the judgment; if concerned parties who are absent from the trial, this period shall be calculated from the date a copy of the judgment is delivered to them or from the date the judgment is posted. Viet Nam considers that the above time limit is appropriate to enable concerned parties to protect their lawful interests and to accelerate the procedure for civil dispute resolution. Currently, Viet Nam has no plan to amend this regulation.

Question 57

Viet Nam indicates in its answer to Question 69 of WT/ACC/VNM/36 that no statistics on arbitration cases are available because arbitration proceedings are not open.

- **Does the law forbid publication of arbitration outcomes?**
- **In order to establish the fairness and impartiality of Viet Nam's arbitration system, Viet Nam should confirm that it will publish the outcomes of arbitration cases.**

Answer:

Announcement of arbitral award: Under the regulation of the Ordinance on Commercial Arbitration, a hearing for dispute resolution shall be held in private. If the parties consent, the arbitration tribunal may permit other persons to attend the hearing (Article 38). Article 45 provides regulations for announcement of arbitral as follows:

- (a) An arbitral award may be announced immediately at the final hearing or thereafter, but shall be announced no later than sixty (60) days from the date of completion of the final hearing. The full text of the arbitral award shall be sent to the parties immediately after the date of announcement.
- (b) At the request of the parties, an arbitration centre or an arbitration tribunal established by the parties shall provide a copy of the arbitral award to the party requesting it.

However, the Ordinance does not provide regulations on publication of the arbitral award because the nature of dispute resolution by arbitration is non-governmental. One advantage of the dispute resolution by arbitration is being confidential and nondisclosure to public the contents of the dispute without those parties' permission. Therefore, Viet Nam has no plan to revise this regulation.

Question 58

In its answer to Question 72 of WT/ACC/VNM/36, Viet Nam indicates that a court could nullify an arbitration award if it is contrary to the public interests of Viet Nam.

- **How does the Ordinance on Commercial Arbitration define "contrary to the public interests of ... Viet Nam?"**
- **Has a court nullified an arbitration decision based on this principle? If so, what were the reasons for nullification? If not, please provide a practical example of a situation where nullification would be appropriate.**

Answer:

Concerning, grounds for setting aside arbitral award, under the Article 54 of the Ordinance on commercial arbitration, a court shall issue a decision setting aside an arbitral award if the applicant proves that the arbitration tribunal issued the arbitral award is contrary to the public interest of the Socialist Republic of Viet Nam. The definitions of "public interest" or public order" in relation with arbitrations and courts are in conformity with international norms and other countries legislation. The definitions provided in the Article 54 of the Ordinance on commercial arbitration are in conformity with 1958 New York Convention on Recognition and Enforcement of Foreign Arbitral Awards.

Concerning the information on the cases that a court setting aside arbitral award under the 2003 Ordinance on Commercial Arbitration, up to now, Viet Nam has no detailed information on these cases.

Question 59

Elements of a Commitment: We propose the following commitment language for this section:

xx. The representative of Viet Nam confirmed that the provisions of the WTO Agreement shall be applied uniformly throughout the customs territory of Viet Nam including in regions engaging in frontier traffic, special economic zones and other areas where special regimes for tariffs, taxes and regulations were established, and that, the Government of Viet Nam shall ensure that laws, regulations and other measures, including those of local governments at the sub-national level conformed to Viet Nam's obligations undertaken in the WTO Agreement. He added that, when informed of a situation where WTO provisions were not being applied or applied in a non-uniform manner, national authorities shall act to enforce WTO provisions without requiring the affected parties to petition through the courts. The Working Party took note of this commitment.

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

Depending on our review of Viet Nam's arbitration system, this commitment may need further modification.

Answer:

The bracket can be moved to the second last sentence (we can agree on the first sentence):

The representative of Viet Nam confirmed that the provisions of the WTO Agreement would be applied uniformly throughout the customs territory of Viet Nam including in regions engaging in frontier traffic, special economic zones and other areas where special regimes for tariffs, taxes and regulations were established, {and that, the Government of Viet Nam would ensure that laws, regulations and other measures, including those of local governments at the sub-national level conformed to Viet Nam's obligations undertaken in the WTO Agreement. [~~He added that, when informed of a situation where WTO provisions were not being applied or applied in a non-uniform manner, national authorities would act to enforce WTO provisions without requiring the affected parties to petition through the courts.~~] The Working Party took note of this commitment.

We agree to break the brackets:

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

IV. POLICIES AFFECTING TRADE IN GOODS

- Trading Rights

Question 60

The draft Working Party Report text should explicitly reflect the commitment made by Viet Nam in Annex 2 to that report and in Annex 2 to WT/ACC/VNM/36 to grant all enterprises with foreign direct investment in the production and manufacturing sectors full rights to trade upon accession.

Paragraph 86 of Working Party Report should be revised to address the apparent contradiction between this text, which states that the rights of foreign invested enterprises to export were identical to those of domestic firms and Table 2 to Annex 2 of WT/ACC/VNM/36 which indicates that foreign firms will not be able to export rice from Viet Nam until 2012.

Paragraph 88 of Working Party Report should be corrected to show that Viet Nam's latest proposed phase-out periods on trading rights range from 2008 to 2012 instead of 2008 to 2010 (trading restrictions on rice have been moved from the state trading category to phase-out in 2012). We hope that there will be further improvements that will facilitate the development of a commitment.

Viet Nam's Annex 2 Tables in the Draft Report containing its trading rights transitions offer remain based on HS 4-digit codes. As trade is conducted at the 8-digit level and as previously requested, the coverage should be described in HS 8-digit categories with explicit product descriptions. The tables should also contain economic explanations for the trading rights restrictions Viet Nam is proposing.

Answer:

Please refer to Annex II of this document for the detailed description of goods in HS 8-digit categories subject to trading rights transitional period. This Annex also includes the rationale for reserving transitional periods for each group of commodities.

A. IMPORT REGULATIONS

- Ordinary customs duties

Question 61

Requests for Information or Clarifications That Should Be Reflected in the Text:

Paragraph 91: The detailed information in this text is out of date. Viet Nam should substitute an update on its tariff regime as of 2004 including the average tariff on key imports such as automobiles.

Answer:

Updated statistics of Viet Nam's current import tariff schedule as of 20 April 2005 are as follows:

- Range of tariff rates: 0 per cent-150 per cent;
- Simple average tariff rate: 17.8 per cent;
- Weighted average tariff rate: 11 per cent.

Simple average tariff rates of major import categories:

- Agricultural products: 21.43 per cent;
- Means of transport: 38.4 per cent;
- Textiles and clothing: 37.3 per cent;
- Minerals: 13.5 per cent;
- Electrical machineries and equipment: 18.46 per cent; and
- Metal: 8.05 per cent.

Question 62

Paragraph 93: The text discusses the frequent changes that Viet Nam's tariff schedule should be reorganized and compressed. Concerning the vague language Viet Nam uses to describe recent changes to tariff rates on petrol, iron, and steel, Viet Nam should provide more detailed information on the tariff rate changes that have occurred recently, e.g., are these increases or decreases, and how much trade is covered.

Answer:

After the tariffication of non-tariff measures in 2000 and the harmonization of its tariff nomenclature with AHTN in 2003, Viet Nam has refrained from introducing frequent tariff changes and fulfilled transparency requirement by making publication of its import tariff schedule in the Official Gazette 15 days prior to the effective date and also in customs e-newsletters, etc. Recent changes of import tariff rates primarily involve sensitive products inclusive of oil, petroleum, iron and steel due to their world price fluctuations.

Fluctuation bands of tariff rates applicable to oil and petroleum and to iron and steel are 5-10 per cent and 10-20 per cent respectively in 2004 and recently. Value of imports of oil and petroleum in 2004 is US\$ 3,547 million and that of iron and steel is US\$ 2,572 million.

Question 63

Paragraph 94: Viet Nam states in the text that it "might need to apply specific or compound duty rates on certain items in the future to counter customs fraud" and is currently looking at converting tariffs on three items (covering 100 tariff lines) to specific rates. Please revise the text to provide an update on the status of these proposals. Viet Nam also should list the three items and corresponding HS numbers at the HS four digit level.

Answer:

In April 2004, Viet Nam proposed to apply specific duty rates to 3 product groups. Viet Nam would update the situation involving such proposal once its bilateral market access negotiations are completed.

Question 64

Please identify all countries to which Viet Nam currently applies standard rates.

Answer:

Please refer to the List of countries and territories to which Viet Nam has extended MFN treatment in trade relation in Annex 3 of document WT/ACC/VNM/36/Add.1.

Question 65

We propose the following commitment language for this section:

"The representative of Viet Nam confirmed that from the date of accession, Viet Nam shall apply tariffs on an MFN basis to all countries and separate customs territories with which it has a WTO relationship and shall apply its authority to increase tariffs in conformity with WTO provisions and its WTO commitments. The Working Party took note of this commitment."

Answer:

Viet Nam would like to accept the following commitment language:

"The representative of Viet Nam confirmed that from the date of accession, Viet Nam shall apply tariffs on an MFN basis to all WTO members and shall apply its authority to increase tariffs in conformity with WTO provisions and its WTO commitments. The Working Party took note of this commitment."

- **Other duties and charges**

Question 66

Please confirm that all ODCs in the form of surcharges have been removed or will be eliminated upon accession.

Answer:

Viet Nam confirms that all ODCs in the form of surcharges has been eliminated since the end of 2004 and commits not to maintain any ODCs from the date of accession.

The legal documents providing for the removal of surcharges on the last 2 items subject to surcharges are the Decision No. 81/2004/QD-BTC dated 15 October 2004 (removing PVC surcharge) and the Decision No. 102/2004/QD-BTC dated 27 December 2004 (removing surcharge on welded steel pipe).

Question 67

The text in paragraph 97 should clarify that import and export surcharges associated with the Export Promotion Fund have been removed on petroleum, iron and steel for construction purposes, fertilizer, sheet steel, paper, cement, clinkers, and rubber.

Answer:

Viet Nam confirms that all ODCs in the form of surcharges has been eliminated since the end of 2004 and commits not to maintain any ODCs from the date of Accession.

The legal documents providing for the removal of surcharges on the last 2 items subject to surcharges are the Decision No. 81/2004/QD-BTC dated 15 October 2004 (removing PVC surcharge) and the Decision No. 102/2004/QD-BTC dated 27 December 2004 (removing surcharge on welded steel pipe).

Question 68

The text in paragraph 98 should clarify that the charges on imports of cement, paper, steel, clinkers, welded steel pipe, and PVC in powder and granule form have been or will be removed at or upon accession.

Answer:

Viet Nam confirms that all ODCs in the form of surcharges has been eliminated since the end of 2004 and commits not to maintain any ODCs from the date of accession.

The legal documents providing for the removal of surcharges on the last 2 items subject to surcharges are the Decision No. 81/2004/QD-BTC dated 15 October 2004 (removing PVC surcharge) and the Decision No. 102/2004/QD-BTC dated 27 December 2004 (removing surcharge on welded steel pipe).

Question 69

We support the commitment language in paragraph 101 of the draft report ; please remove the brackets.

Answer:

Viet Nam agrees to remove the brackets.

- **Tariff rate quotas, tariff exemptions**

Question 70

Requests for Information or Clarifications That Should Be Reflected in the Text:

Paragraph 103: The text describes the statutory basis and product coverage of Viet Nam's TRQ regime. Please provide detailed information describing the administration of the TRQ regime on both non-agricultural products and agricultural products. Please include citations to relevant normative legal documents.

Answer:

All the requested information has been provided in Viet Nam's Offer on TRQ.

Relevant legal normative documents include the following:

- Decision No. 91/2003/QD-TTg dated 9 May 2003 by the Prime Minister on application of TRQs on goods imported into Viet Nam;
- Circular No. 10/2004/TT-BTM dated 27 December, 2004 by the Ministry of Trade guiding the implementation of Decision No. 91/2003/QD-TTg dated 9 May 2003 by the Prime Minister on application of TRQs on goods imported into Viet Nam;
- Decision No. 46/2005/QD-TTg dated 3 March, 2005 by the Prime Minister on revising the list of imported goods subject to TRQs;
- Circular No. 04/2005/TT-BTM dated 24 March, 2005 by the Ministry of Trade on revising the list of imported goods subject to TRQs for 2005 (which amends and supplements Circular No. 10/2004/TT-BTM dated 27 December, 2003 by the Ministry of Trade).

Information regarding the administration of TRQs has been provided in Annex 4 of the document WT/ACC/VNM/33.

Question 71

To facilitate a full understanding of Viet Nam's TRQ regime, Viet Nam should provide the in-quota and out-of-quota rates for all products, quota volumes and growth rates in the text.

Answer:

All the requested information has been provided in Viet Nam's Offer on TRQ.

Question 72

Request that Viet Nam consider eliminating TRQs on salt, bird eggs, sugar, and tobacco upon accession.

Answer:

We cannot agree to this suggestion.

Question 73

Viet Nam should provide the following commitment, tracking its statement in paragraph 103:

XX. The representative of Viet Nam confirmed that it would replace the current system of discretionary licensing pursuant to Prime Minister Decision No. 46/2001/QD-TTG of 4 April 2001 with a tariff rate quota mechanism as from the date of accession. He further confirmed that Viet Nam would apply and administer its tariff rate quotas in conformity with WTO applicable rules and regulations, including the MFN and national treatment. The Working Party took note of these commitments.

Answer:

We can agree with the following text:

The representative of Viet Nam confirmed that it would replace any discretionary licensing measure currently apply pursuant to Prime Minister Decision No. 46/2001/QD-TTG of 4 April 2001 with a tariff rate quota mechanism as from the date of accession. He further confirmed that Viet Nam would apply and administer its tariff rate quotas in conformity with WTO applicable rules and regulations, including the MFN and national treatment. The Working Party took note of these commitments.

- **Fees and charges for services rendered**

Question 74

Viet Nam maintains "minimum" fee regimes for importers of certain goods that are higher than ordinary fees. For example, Viet Nam charges special custom clearance fees for automobiles and motorcycles and special custom warehouse fees for IT products such as computers, faxes, and televisions. This appears to be a purely revenue- or policy-driven measure, not a fee related to the cost of customs processing. Please provide justification for the higher fees customs clearance fees for these products.

Answer:

The classification of goods subject to different customs fee rates in the Inter-Ministerial Circular No. 71/2000/TTLT/BTC-TCHQ is based on the complexities of the State management activities involved. As such, those goods for which the State management is more complicated should be imposed higher customs fee rates.

The minimum fee rate is stipulated to ensure costs for performing the State management on imports and exports and costs of customs warehousing are covered.

All customs fees and charges are aimed to cover costs for customs services rendered and not to be revenue-driven. Such costs include: cost of manufacturing seals (paper seals, lead seals, seal rings), utilities costs directly related to fee and charge collection, preservation cost of goods; remuneration for fee collectors; travel payments for escorting cargo and luggage; recurrent and major repair of properties, machines, equipment serving directly fee collection; purchasing materials and other expenditures directly associated to fees and charges collection.

Question 75

Table 2: The "note" states that transit fees can be found in Table 13(a) and (b). This citation should be changed to Table 14(a) and (b).

Answer:

We understand that this comment is addressed to the Secretariat.

Question 76

Please describe the purpose of the fees listed in Table 14(a).

Answer:

Table 14(a) describes fees for cargo and luggage in transit through Viet Nam which are collected to cover costs of customs services rendered when cargo and luggage of a third country transit via Viet Nam.

Question 77

Referring to Table 14(b), how do the escort and sealing fees relate to the cost of the service?

Answer:

Sealing fees are collected to cover costs to manufacture paper seals, lead seals and seal rings as well as management costs to perform customs seal services. Escorting fees are collected to cover expenses for customs officers escorting cargo and luggage, management costs. Both kinds of fees are maintained at a level approximate to the costs of customs services rendered.

Question 78

The discussion of Viet Nam's fee on foreign exchange imports should be moved to the section on Foreign Exchange and Balance of Payments.

Answer:

The discussion of Viet Nam's customs fee on foreign exchange imports and exports should be more appropriately put in this section.

Question 79

Confirm that from the date of accession:

Viet Nam will impose fees and charges for services rendered on or in connection with importation or exportation:

- **only in conformity with the relevant provisions of the WTO Agreements, in particular Articles VIII and X of the GATT 1994;**
- **based on unified criteria that ensure that the fees are limited to the approximate cost of services rendered;**
- **that the practice of higher special fees for some imports would be eliminated; and**
- **that information regarding the application and level of any such fees, revenues collected and their use would be provided to WTO Members upon request.**

Answer:

We would like to propose the following text:

Upon accession, Viet Nam shall apply fees and charges for services rendered for importation and exportation in conformity with the WTO Agreement, specifically in conformity with Article VIII of GATT 1994.

- **Application of internal taxes to imports**

Question 80

Viet Nam announced at the May 20 informal Working Party meeting that it intends to enact legislation to equalize excise taxes on imported and domestically produced automobiles and beer. This should be reflected in the draft Working Party report.

Answer:

We agree with this comment.

Question 81

When does Viet Nam expect the National Assembly to enact this legislation?

Answer:

The draft of the amended Law on Excise Tax which provides for the equalization of excise tax rate between imported and domestically produced automobiles and beer is scheduled to be submitted to the National Assembly for approval in its session in November 2005.

Question 82

Has this legislation been added to the Legislative Action Plan?

Answer:

Yes, please refer to item 5 of Table 1 in document WT/ACC/VNM/31/Rev.3.

Question 83

Viet Nam should indicate that it intends to secure similar treatment on taxes applied to distilled spirits.

Answer:

Viet Nam currently maintains no national treatment discrimination with respect to distilled spirits in terms of excise tax. However, Viet Nam's Government will consider proposing a narrower gap of excise rates applicable to varieties of spirits in the draft of amended Law on Excise Tax scheduled to be submitted to the National Assembly at this November session.

Question 84

We appreciate Viet Nam's willingness to review its VAT exemption for domestic farm output, in light of the requirements of Article III of the GATT.

Answer:

Viet Nam is re-examining its provisions on VAT applied to unprocessed agricultural products vis-à-vis the assurance of national treatment and consistency with Article III of GATT.

Question 85

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

XX. The representative of Viet Nam confirmed that from the date of accession, Viet Nam would ensure that its laws, regulations and other measures relating to internal taxes and charges levied on imports would be in full conformity with its WTO obligations, in particular Article III of GATT 1994, and that it would implement such laws, regulations and other measures in full conformity with those obligations. The representative of Viet Nam confirmed that Viet Nam's laws had been changed so that excise taxes on imported automobiles, beer, and distilled spirits are levied at rates no less favourable to imports than those applied to domestically-produced automobiles, beer, and distilled spirits. The Working Party took note of these commitments.

Answer:

We would accept the following language:

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

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

Question 86

Prohibitions. Paragraph 122: Please provide HS numbers for all of the toxic chemicals that are restricted in Tables 5(a) and (b).

Answer:

Table 5(a), part 1 (23 items): HS codes are not applicable.

For the remaining 27 items (Table 5(a), part 2): they belong to Schedules 1, 2 and 3 of the Convention on the Prohibition of the Development, Production, Stockpiling and Use of Chemical Weapons and on their Destruction, to which Viet Nam is a State Party. Some items in Table 5(b) are also under these Schedules. Detailed list and respective 6-digit HS are attached herewith in Annex III.

The Government of Viet Nam has recently issued the Decree No.100/2005/ND-CP dated 2 August 2005 on the implementation of the Convention on the Prohibition of the Development, Production, Stockpiling and Use of Chemical Weapons and on their Destruction. The Decree stipulates a prohibition on virtually all chemicals in Table 5(a) and conditional import licensing applied to chemicals in Table 5(b) parts 1 and 2.

Question 87

Paragraphs 123 and 127: The text in this paragraph provides further information about products prohibited from importation to Viet Nam and a reference to Table 4(a) where all of the prohibited products are listed (except for toxic chemicals). The length of the prohibition list in Table 4(a) raises concerns as to whether Viet Nam is using the least trade restrictive means to address health, safety, environmental, or other concerns.

Please provide HS numbers on all products prohibited from importation as listed in Table 4(a).

Answer:

Viet Nam has provided HS codes for all products where HS codes are applicable.

Question 88

The list of prohibitions of second-hand consumer goods, including electronics and refrigerator equipment, seems very broad and would prevent companies from filling servicing contracts with "remanufactured goods."

Answer:

We have not been sure if this separation would be practical.

Question 89

Table 4(a) also states that "specialized encryption software and machines" are prohibited from importation. In today's high-tech world, encryption software and machines can be found in computers, palm pilots, phones, etc. Viet Nam must provide a specific list by HS numbers of goods subject to prohibition, eliminating commercially traded electronic goods with encryption technology from coverage of this ban.

Answer:

We can confirm that this restriction shall not apply to general, commonly traded goods equipped with encryption technology which are destined for mass consumption. For security reasons, Viet Nam would not be in a position to provide a specific list of specialized encryption software and machines that Viet Nam is using.

Question 90

Viet Nam has provided a list of both toys and depraved cultural products that could be prohibited from importation. However, the list is so long that it could almost exclude any good under the harmonized system. We request that Viet Nam provide a more specific list with HS numbers.

Answer:

In accordance with Viet Nam's laws and regulations, the following toys and cultural products are considered as depraved and are prohibited from importation, production and circulation in Viet Nam. These are products that contain images, contents, designs, languages, sounds or actions, etc. stimulating lewdness or incest, describing in details scenes of nudity or sexual activities that run counters to traditional morals and good customs of the Vietnamese people.

The list of imported goods that might be subject to prohibition (they are only prohibited when the contents above are found) during the 2001-2005 period includes:

No.	HS Code	Product Description	Management methods
1.	3706, 4901-4904, 4909-4911, 8524	Cultural products containing images, sound, content of pornography, violence, reactionary or anti-Viet Nam propagation,	Import Prohibition
2.	9501-9505	Toys which have an adverse effects on personal development and adverse effects on social order, security, and safety.	Import Prohibition

Viet Nam has difficulties in identification of HS classification. With respect to some products that are sensitive, the HS classification does not define the contents of these products.

Question 91

In Paragraph 125, Viet Nam indicates that the prohibition of motorcycles with engine capacity exceeding 175 cc is justified on the basis of traffic safety. This measure is not the most efficient or the least trade restrictive measure that Viet Nam can take to provide greater traffic safety. Other countries in the region have recently rescinded bans. We request that Viet Nam reconsider the ban.

Answer:

Viet Nam is prepared to discuss about converting of import prohibition of motorcycles with engine capacity exceeding 175cc into non-automatic import licensing (licenses are only given to imports for use by the police, armed forces and for sport competition).

- **Import Licensing Procedures**

Question 92

Paragraphs 129 - 135: Viet Nam should revise the description of its import licensing regime as governed by Decision 46 of 2001, describing specifically the measures it will take to comply with the WTO Agreement on Import Licensing Procedures by January 2006. We need a more accurate picture of the requirements that importers will be required to follow to be issued an import license. That revision should include the following:

Information from an updated Import Licensing Questionnaire that will include tables that list the products subject to licensing, the responsible ministry, and the type of license (automatic or non-automatic), with annexes that replace or amend Annex 6.

Additional detail of both the automatic and non-automatic licensing regimes in Viet Nam, including information on the level of harmonization of procedures between the different government ministries, the timeframe for issuance of an import license, appellate procedures, and any other relevant information that a licensee would need to know.

Answer:

All requested information will be submitted in the Replies to Questionnaires on Import Licensing Procedures.

Question 93

Some of the products listed in Annex 6 are subject to technical regulations, rather than to automatic or non-automatic import licensing. For clarity and consistency, products subject to technical regulations enforced through import licensing, such as SPS or TBT requirements, should be described in those respective sections of the draft WP Report, not in the Import Licensing section. Also, Viet Nam should provide separate annexes that list the goods subject to mandatory SPS and TBT requirements (i.e., technical regulations). To the extent that these products also require an import license that is used to ensure that the technical requirements have been met, that information should be provided.

Answer:

Annex 6 is a quote of a domestic regulation (i.e. the Prime Minister's Decision No. 46/2001/QD-TTg of 4 April 2001). As such, it may contain different measures.

Concerning the list the goods subject to mandatory SPS and TBT requirements, Viet Nam will provide them as soon as the formulating process is completed.

- **Payment Restrictions**

Question 94

Paragraph 121: In this paragraph, Viet Nam references the payment restriction chart (Table 4(c)) in the annex of the draft Working Party Report. Viet Nam should provide information in the text describing the purpose or administration of the payment restriction system in the context of its import restrictions or import licensing.

Viet Nam indicated it had rescinded all payment restrictions. We commend Viet Nam for taking this step. Viet Nam should state this fact at the end of paragraph 121 and provide a citation to the regulation/decreed that repealed the payment restriction law.

If Viet Nam has now rescinded all payment restrictions, we are not sure that Table 4(c) is necessary.

Answer:

We agree with the suggestion to remove this Table as the measure has been rescinded.

Question 95

We support the commitment in paragraph 135; please remove the brackets.

Answer:

Viet Nam agrees with the following draft:

The representative of Viet Nam confirmed that, upon accession, Viet Nam would eliminate the import prohibition on cigarettes and cigars and used motor-vehicles and all quantitative import restrictions in the form of quota or restrictive licences inconsistent with WTO provisions. Viet Nam would also, as from the date of accession, apply line management measures in a WTO-consistent manner and not use these measures as quantitative import restrictions. He further confirmed that Viet Nam would comply fully with the Agreement on Import Licensing Procedures upon accession. The Working Party took note of these commitments.

- **Customs valuation**

Question 96

Paragraph 140: WT/ACC/VNM/34 indicates that Viet Nam has adopted the principle of applying transaction value in customs value determination (Circular 87/2004/TT-BTC dated 31 August 2004). Please update the draft Working Party report with this information and provide a translated copy of the Circular.

Answer:

Viet Nam confirms that it has adopted the principle of applying transaction value in customs valuation by the virtue of the Government Decree No. 60/2002/ND-CP and the Circular No. 118/2003/TT-BTC of Ministry of Finance. Please note that the Circular No. 87/2004/TT-BTC dated 31 August 2004 provides for the abolition of all minimum customs values and such abolition is applicable to all imports from all countries.

Viet Nam agrees to update this information in the Draft Report.

Question 97

WT/ACC/VNM/34 also indicates that the system of minimum prices has been fully abolished. Is this true for all countries and all products? Has the "roadmap" towards a WTO consistent system referred to in this document been fully implemented, i.e., (i) methods of customs valuation to fully comply with methods prescribed in the Agreement; (ii) customs authority to

carry out customs valuation by itself; and (iii) importers to carry out customs valuation or customs valuation be carried out as stipulated in the Agreement?

Answer:

The Circular No. 87/2004/TT-BTC dated 31 August 2004 provides for the abolition of all minimum customs values and such abolition is applicable to all imports from all countries.

According to the Decree No. 60/2002/ND-CP and the Circular No. 118/2003/TT-BTC, except for the computed value method and deductive method for imported goods for further processing that have been transformed after processing which shall comply with the CVA upon accession, other customs valuation methods have already been in conformity with those specified in the CVA.

Customs valuation stipulated in the Circular No. 118/2003/TT-BTC is in compliance with the CVA.

Question 98

Concerning implementation of the WTO Agreement on Customs Valuation: Are all aspects of the Agreement, including the provisions of Articles 5 and 6, now applied to imports from all countries? If not, please indicate specifically where the Agreement is not fully implemented, and the countries whose trade is not covered by such rules.

Answer:

Viet Nam has so far signed reciprocal agreements with 58 countries and territories to apply the CVA to imports from each other (please find the List of countries and territories subject to CVA application in Annex IV). Therefore, nearly all imports to Viet Nam have been applied the GATT customs valuation.

According to the Decree No. 60/2002/ND-CP and the Circular No. 118/2003/TT-BTC, except for the computed value method and deductive method for imported goods for further processing that have been transformed after processing which shall comply with the CVA upon accession, other customs valuation methods have already been in conformity with those specified in the CVA.

Customs valuation stipulated in the Circular No. 118/2003/TT-BTC is in compliance with the CVA.

Question 99

Please identify the specific legislation that provides for publication of customs rulings and provide a copy to the Working Party.

Answer:

Publication of customs legal documents is implemented in accordance with Vietnamese legislation on publication and transparency of legal normative documents and guiding documents of the State management agencies that are of general application.

Regulation on administrative rulings, including customs rulings, is provided for in the Law on Complaints and denunciation. According to Article 17 of this Law, customs administrative decisions should be sent to complainants.

Question 100

Please describe Viet Nam's surety bond system for release of imported goods from Customs pending dispute resolution.

Answer:

Currently Viet Nam does not have any regulation of surety bond system for release of imported goods from customs pending dispute resolution of customs valuation. However, this issue is intended to be regulated in the forthcoming draft Decree on Customs Valuation.

According to Article 25.2.b of the Customs Law No. 29/2001/QH10 dated 29 June 2001:

"Goods and transport means for which the Customs procedures have not yet been completed may enjoy Customs clearance if they fall under one of the following cases:

...

Having not yet paid or having paid the payable tax amount not in full within the prescribed time limit during which a credit institution or another organization permitted to conduct certain banking activities provides guarantee for such payable amount, except for export and import goods entitled to a grace period for tax payment according to the provisions of the tax legislation."

As a result, in cases of disputable customs values but customs authorities have issued tax notification and specified time-limit for tax payment:

- Customs declarants of consumer goods are still able to release their goods from customs upon submitting guarantee of tax payment if it required that tax payment must be made before the clearance of goods, and subsequently the customs declarants can exercise their rights of complaint against customs decisions.
- Customs declarants of imported goods allowed to enjoy a grace period in fulfilling their tax obligation are able to release their goods from customs without submitting guarantee of tax payment, and subsequently the declarants can exercise their rights of complaint against customs decisions.

Question 101

Please identify any additional relevant legislation.

Answer:

Updated legal documents include: Import and export duties Law No. 45/2005/QH11 dated 14 June 2005 and Law on amendment and supplement to some Articles of the Customs Law No. 42/2005/QH11 dated 14 June 2005.

Question 102

We request Viet Nam to join other important trading countries and implement paragraph 2 of Decision 4.1 on "Valuation of Carrier Media Bearing Software."

Answer:

Viet Nam would apply provisions of the Decision on the Valuation of Carrier Media Bearing Software for Data Processing Equipment, adopted by the WTO Committee on Customs Valuation (G/VAL/5), as soon as possible, but in any event no later than two years from the date of accession.

Question 103

We prefer the first commitment text bracketed in paragraph 144 because it is more comprehensive. We seek additional confirmation of the following:

- **Implementation of paragraph 2 of Decision 4.1 on "Valuation of Carrier Media Bearing Software";**
- **Minimum prices or any system of reference prices or fixed valuation schedule applied in lieu of the transaction value, have been eliminated and will not be reintroduced; and**
- **Establishment of a surety bond system.**

Pending: depending on responses to our questions, there may be a need for additional detail in the commitment.

Answer:

Viet Nam will provide the specific comments on this point when a detailed commitment language is proposed.

- **Rules of origin**

Question 104

Paragraph 146: The text should clarify who the "competent body" or "relevant authorities" are who issue certificates of origin, and indicate precisely when such a certificate is required by law. Are these Vietnamese diplomatic offices abroad? Do the certificates issued by the Chamber of Commerce and Industry of Viet Nam have the same mandatory character as those issued by "relevant authorities?"

Answer:

The Certificates of Origine authority bodies of Viet Nam are the Ministry of Trade, the Viet Nam Chamber of Commerce and Industry (VCCI) and Management Boards of Industrial parks and Export processing zones that are authorized by the Ministry of Trade. There are no Vietnamese diplomatic offices abroad issuing Certificates of Origine.

The origin of imported or exported goods is identified on the basis of the actual goods, the certificates of origin of goods, the customs declaration forms and documents of the customs dossiers.

The certificates of origin of imported or exported goods (hereinafter referred to as C/O) are documents issued by the competent agencies or organizations certifying the origin of a shipment of imported or exported goods.

C/O is required to be submitted to customs authorities in the following cases:

- (a) Goods of origin from those countries to which Viet Nam extends import duty preferences in accordance with the Vietnamese laws or international treaties or agreements signed between Viet Nam and foreign countries, groups of countries or international economic organizations and the importers wish to enjoy such preferences;
- (b) Goods are subject to import management regulations in accordance with the Vietnamese laws or international treaties or agreements signed between Viet Nam and foreign countries, groups of countries or international economic organizations;
- (c) Goods that the Government of Viet Nam or international organizations announces to be likely to cause harm to social security, public health or the environment;

- (d) Goods that are imported from countries that the Government of Viet Nam announces to be subject to trade measures such as anti-dumping duties, countervailing duties etc.

C/Os must be issued by the competent agencies as prescribed by the C/O-issuing countries or other organizations as designated by them. When a C/O is issued by the manufacturer, it must be certified by the concerned competent agency or organization of the issuing country.

Question 105

We request clarification as to the methods, if any, currently used to determine the country of origin of goods imported into Viet Nam independent of certificates of origin. Does Viet Nam's legislation provide for using "substantial transformation" as a means of determining origin? Is there provision for verification and audit?

Answer:

According to Article 10 of the Decree No. 101/2001/ND-CP dated 31 December 2001 providing the implementation of a number of articles of the Customs Law regarding customs procedures, customs inspection and supervision regime, the inspection of goods origin must be based on the results of inspection of the actual conditions of the goods as well as the customs dossiers.

The draft Decree on Rules of Origin which is based on the WTO Agreements on Rules of Origin is in preparation and expected to be completed and submitted to the Government at the end of 2005. It is intended that the draft Decree shall incorporate the principle of substantial transformation as a means of determining the origin of goods and other provisions for verification and audit.

Question 106

What mechanisms exist for administrative and judicial review of any origin determinations?

Answer:

Administrative decisions on origin are subject to the same administrative and judicial review mechanism as applied to other administrative decisions.

Question 107

Please indicate if fees are charged for the issuance of these certificates, and give the level of the fee and its relationship to the costs of the service rendered in providing it.

Answer:

Currently, Viet Nam imposes fees and charges on issuing export certificates and C/O form A of footwear products exported to EU market in accordance with the Decision No. 183/2000/QD-BTC dated 14 November 2000.

Specific charges are as follows:

- Exporting certificate: 10,000 VND (approximately 0.6 USD) per certificate;
- C/O form A: 40,000 VND per certificate; and
- Re-issuance of certificate: 10,000 VND/one issuance of certificate.

Relationship between fees and charges imposed and service rendered: the revenue is to cover the cost of rendering services of issuance such as printing cost, remuneration for service providers and fee collectors, and associated expenditures to determine origins such as inspection, communications, etc.

Question 108

What rate of tariff (preferential, special preferential, or ordinary) is charged on goods when their origin cannot be determined, e.g., is it the "preferential (or MFN) rate, or something else?

Answer:

When the origin of goods cannot be determined, customs authorities shall allow the clearance of imported goods but assess customs duties at the ordinary (standard) duties rate.

Question 109

How does Viet Nam intend to "to comply fully with the Agreement on Rules of Origin from the date of accession?" Does Viet Nam have legislation in the pipeline to establish WTO-consistent provisions for determining the origin of imports?

Answer:

The draft Decree on Rules of Origin which is based on the WTO Agreements on Rules of Origin is in preparation and expected to be completed and submitted to the Government by the end of 2005. It is intended that the draft Decree shall incorporate the principle of substantial transformation as a means of determining the origin of goods and other provisions for verification and audit.

Question 110

The text of paragraph 147 suggests Viet Nam's willingness to make appropriate commitments, but is not in itself good commitment language.

We suggest the following as a basis for discussion in developing a commitment:

147bis. "The representative of Viet Nam confirmed that from the date of accession Viet Nam's laws and regulations on rules of origin for both MFN and preferential trade would be applied in conformity with the provisions of the WTO Agreement on Rules of Origin, including the provisions of Annex II, and that these provisions would be established in Viet Nam's legal framework. He further confirmed that, in line with the requirements of Article 2(h) and of Annex II, paragraph 3(d), both for non-preferential and preferential rules of origin, its customs authorities would provide an assessment of the origin of the import and outline the terms under which such an assessment would be provided upon the request of an exporter, importer or any person with a justifiable cause. According to the provisions of the WTO Agreement on Rules of Origin specified above, any request for such an assessment would be accepted even before trade in the goods concerned had begun, and any such assessment would be binding for three years. The representative of Viet Nam further stated that Viet Nam would not use the rules of origin as an instrument to pursue trade objectives directly or indirectly. The Working Party took note of these commitments."

Depending on the development of information requested above, we may want to suggest additional commitments to eliminate penalties applied as a default for imports of undeterminable origin and bring any fees charged for certificates of origin into conformity with WTO provisions.

Answer:

Viet Nam would like to propose the following text:

The representative of Viet Nam confirmed that from the date of accession Viet Nam's laws and regulations on rules of origin for both MFN and preferential trade would be applied in conformity with the provisions of the WTO Agreement on Rules of Origin, including the provisions of Article 2(h) and Annex II, and that these provisions would be established in Viet Nam's legal framework. The representative of Viet Nam further stated that notwithstanding the measure or instrument of commercial policy to which they are linked, Viet Nam would not use the rules of origin as an instrument to pursue trade objectives directly or indirectly. The Working Party took note of these commitments.

- **Preshipment inspection**

Question 111

Paragraph 151: Viet Nam has stated that it is "not applying mandatory preshipment inspection" at the present time. What non-mandatory PSI provisions exist presently? Does Viet Nam's customs service make use of "non-mandatory" PSI determinations?

If PSI determinations are used in customs work, please outline how importers are informed about these requirements and how they may appeal decisions made on this basis.

Answer:

Viet Nam's existing Customs Law does not have any provisions regarding PSI. Article 30 of the Customs Law and Article 8 of the Government Decree No.101/2001/ND-CP dated 31 December 2001 providing for the implementation of a number of articles of the Customs Law regarding customs procedures, customs inspection and supervision regime has provided for forms of physical inspection of export and import goods for customs clearance. Results of non-compulsory inspections shall not be used by Viet Nam's Customs authorities.

Question 112

The text should reflect that Viet Nam does not operate an official PSI system, but does allow importers to require preshipment inspection of imports in private contracts.

Answer:

The current Law on Customs does not have any provisions regarding PSI, at the same time, Viet Nam Customs does not use results of non-compulsory inspections. We would like to delete the second phrase from "but does allow importers to require preshipment inspection of imports in private contracts".

Question 113

We supplied the material in brackets for the text in paragraph 152, and support a commitment with these elements, based on the principle that the activities of the PSI firms that perform customs processing duties are subject to the requirements of the relevant WTO Agreements, just like the state Customs Service that makes use of the results.

Should Viet Nam make use of a PSI facility, on either a mandatory or non-mandatory basis, further clarifications within the commitment text may be necessary. Unless there are legal

provisions in place that guarantee a WTO-consistent operation of the system, the commitment may require additional specific elements addressing individual concerns.

Answer:

Viet Nam agrees with the text of paragraph 152 after deleting "[temporary and]", removing the second brackets and deleting the whole text in the third brackets.

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

Question 114

We have conducted a preliminary examination of Viet Nam's new anti-dumping and countervailing duty legislation and submitted questions in document WT/ACC/VNM/36. However, Viet Nam has not adequately addressed our questions and concerns with respect to its countervailing duty ("CVD") legislation. The text should provide responses to the comments in paragraphs 337-343, and include information reflecting Viet Nam's more detailed response to the written comments provided bilaterally.

We note that Viet Nam is currently drafting implementation documents for their new countervailing duty legislation and we look forward to reviewing these documents and the clarification these documents will provide. We also welcome responses to our previously asked questions regarding Viet Nam's CVD legislation.

Answer:

I. General comments

The Government Decree No. 89-2005-ND-CP, available through WT/ACC/VNM/39/Add.1, setting forth Detailed Regulations and Guidance for the implementation of a Number of Provisions of the Ordinance on measures against subsidized products imported into Viet Nam has been recently promulgated on 11 July 2005 (hereinafter referred to as the Decree). The Decree has elaborated aspects that have not been concretized in the Ordinance, such as provision of information, confidentiality, organization of consultation sessions, obligation to make public elements or decisions relevant to the investigation, and procedures for investigation and application of countervailing measures, etc. Provisions in this Decree are elaborated on the basis of ensuring the conformity with the Agreement on Subsidies and Countervailing measures of the WTO (the SCM).

Please find herewith attached an unofficial English translation of the Decree for your reference.

Viet Nam's legislation ensures full conformity of Vietnamese legislation on countervailing measures against subsidies with applicable WTO rules. In particular, Article 29 of the Ordinance on CVD states that "in instance of conflict between Vietnamese and relevant regulations in agreements or treaties that Viet Nam signed or acceded to, such agreements or treaties shall prevail".

II. Specific clarification

Concerning the US's comments raised in the document WT/ACC/VNM/36, we believe that such concerns may result from translation mistakes. We are pleased to provide following clarifications:

1. Clause 4, Article 2 of the CVD Ordinance should be revised as follow:

"4. Material injury to a domestic industry shall be taken to mean or a situation associated with the retardation of the establishment of the industry."

As to determine the injury or threat of injury to the domestic industry, the investigating authority and the Council for handling anti-subsidy cases (the Council) shall base on provisions in Article 15 of the CVD Ordinance. In addition, anti-subsidy competent agencies shall have to take into account other factors pursuant to Article 26 of the Decree. Such stipulations are compatible to relevant provisions in Article 15 of the SCM.

2. Clause 1, Article 22 of the Ordinance of Imposition of provisional anti-subsidy duty stipulates that not sooner than 60 days as from the date on which the decision to initiate the investigation was made (not "within 60 days"), the Minister of Trade may issue a decision on imposition of provisional anti-subsidy duty.

Besides, some issues of concern or at request for clarification with respect to certain provisions of the CVD Ordinance of the US had been addressed in the Decree. We would like to provide following clarifications:

1. Detail on the amount of time that exporters or foreign producers will have to respond to the questionnaire is provided in Article 24 of the Decree. According to the article, exporters or foreign producers shall be given 30 days as from the date of receiving the questionnaire to submit their response to the investigating authority. This time-limit may be extended up to 30 days upon written request made by exporters or foreign producers concerned.
2. The right to present information orally of interested parties is provided for in Article 16 of the CVD Ordinance and further elaborated in Article 27 of the Decree on Organizing consultation sessions in the course of investigation. Such stipulations are compatible to relevant provisions in Article 12 of the SCM.
3. Confidentiality of information is provided in Article 17 of the CVD Ordinance and further elaborated in Article 28 of the Decree.
4. Details on refund of duties is provided in Article 39 of the Decree, which stipulates that interest on amounts refundable shall not be counted.
5. The issue of publication of relevant information, the Decree stipulates the obligation to publicize the major grounds for making decisions or conclusions in the course of investigation, including: preliminary conclusion (Article 29), decision on imposition of provisional duty (Article 36), decision on termination of investigation (Article 30), final conclusion, ministerial decision on undertakings (article 34), decision on imposition of anti-subsidy duty (Article 38). The Decree also stipulates clearly the timeframe allowed for competent authority to make notice or publication of such information or decisions thereby.

Question 115

We seek updated information on Viet Nam's use of its authority to apply trade remedies.

Answer:

Regarding the application of trade remedies, up to present, Viet Nam has not initiated any trade remedies case.

Question 116

We would like to confirm that if, at the time of accession, Viet Nam has not notified safeguard, anti-dumping and countervailing duty legislative authority in conformity with its obligations under the WTO to the appropriate WTO Committee, Viet Nam would not apply such measures

until legislation in conformity with the provisions of these WTO Agreements was implemented. Given Viet Nam's non-market economy status, it likely will be necessary to include an additional commitment that would allow WTO members to apply alternative calculation methodologies in trade remedy investigations.

Answer:

We strongly oppose to any commitment on alternative calculation methodologies in trade remedy investigations.

Question 117

We suggest the following amended commitment text:

XX. "The representative of Viet Nam confirmed that the government would ensure that any legislation in place at the time of accession providing for the application of measures taken for safeguard, anti-dumping or countervailing duty purposes would be in conformity with the provisions of the WTO Agreements on Safeguards, on Anti-dumping and on Subsidies and Countervailing Measures. The representative further confirmed that Viet Nam would not apply measures for safeguard, anti-dumping or countervailing duty purposes after accession until legislation in conformity with the provisions of these WTO Agreements had been notified and implemented. In the future elaboration of any legislation concerning anti-dumping, countervailing duty and safeguard measures, Viet Nam would ensure their full conformity with the relevant WTO provisions, including the Agreements on the Implementation of Article VI, the Agreement on Subsidies and Countervailing Measures and the Agreement on Safeguards. The Working Party took note of this commitment."

Answer:

Please accept the following commitment:

"The representative of Viet Nam confirmed that any legislation in place at the time of accession providing for the application of measures taken for safeguard, anti-dumping or countervailing duty purposes would be conformity with the provisions of the WTO Agreements on Safeguards, on Anti-dumping and on Subsidies and Countervailing Measures. The representative further confirmed that Viet Nam would not apply measures for safeguard, anti-dumping or countervailing duty purposes after accession until legislation in conformity with the provisions of these WTO Agreements had been notified and implemented. In the future elaboration of any legislation concerning anti-dumping, countervailing duty and safeguard measures, Viet Nam would ensure their full conformity with the relevant WTO provisions, including the Agreements on the Implementation of Article VI, the Agreement on Subsidies and Countervailing Measures and the Agreement on Safeguards. The Working Party took note of this commitment."

B. EXPORT REGULATIONS

- **Export restrictions**

Question 118

Paragraph 158: Viet Nam suggests 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." We ask

Viet Nam to clarify how export duties at the 35 to 45 percent level do not create an impediment to trade.

We remain concerned that Viet Nam's exports of ferrous and non-ferrous scrap are clearly restricted by the imposition of export duties of 35 to 45 percent. We request Viet Nam provide a plan for scheduling the reduction of all its export duties and eliminate export duties imposed on ferrous and non-ferrous metal scrap by the date of accession.

Answer:

In Viet Nam's view, export tariff rates on ferrous and non-ferrous at 35-45 per cent should not be considered a restriction to international trade for the following reasons: (i) these raw materials of Viet Nam are not the main supply source for the world, thus Viet Nam's export tariff shall not create price-increasing pressure and affect world trade; (ii) Viet Nam wishes to ensure the supply of materials for domestic production due to its limited domestic source; (iii) Currently high export tariff is only imposed on scraps while in practice the exportation of metal scraps is limited, thus export tariff imposition will not affect the trade flow.

Viet Nam may consider reviewing these levels of export tariff rates. However, Viet Nam is of the view that export tariffs do not breach any WTO provisions.

Question 119

We recommend the following commitment text for this section:

XX. The representative of Viet Nam recognized the concerns of members that export duties can act as *de facto* export restrictions and confirmed that Viet Nam would apply export duties, export restrictions as well as internal regulations and taxes applied on or in connection with exportation in conformity with the WTO Agreement, in particular with Article I of the GATT 1994. He further confirmed that Viet Nam would reduce or eliminate export duties in accordance with the List of Concessions and Commitments annexed to the Protocol of Accession and that the List of Concessions and Commitments included all export duties applied by Viet Nam. In particular, he confirmed that export duties on ferrous and non-ferrous scrap had been eliminated in advance of accession. He also confirmed that Viet Nam would not introduce new, reintroduce or increase export duties unless justified under an exception of the WTO Agreement. The Working Party took note of these commitments.

Answer:

Viet Nam is of the view that export tariffs do not breach any WTO provisions.

C. INTERNAL POLICIES AFFECTING FOREIGN TRADE IN GOODS

- Industrial policy, including subsidies

Question 120

The detailed record on subsidies should be located in the sections on Export Subsidies and Industrial Policy, Including Subsidies. The Investment section, for instance, should only contain cross-references to the subsidies sections, rather than detailed discussion of this issue.

We reviewed Viet Nam's Article 25 Subsidy Notification (WT/ACC/VNM/13/Add.2) and identified the following as potential export contingent programs. Viet Nam should address our concerns with respect to each of these programs and remove the prohibited elements in them prior to accession:

- III. INVESTMENT INCENTIVES FOR DOMESTIC ENTERPRISES OPERATING IN VIET NAM
- IV. INVESTMENT INCENTIVES FOR FOREIGN-OWNED ENTERPRISES
- V. INCENTIVES IN DEVELOPMENT INVESTMENT LOAN
- VI. SUPPORT FOR DEVELOPMENT OF TEXTILE AND CLOTHING SECTORS
- VIII. EXPORT PROMOTION
- X. TRADE PROMOTION SUPPORT
- XV. ASSISTANCE TO ENTERPRISES FACING DIFFICULTIES DUE TO OBJECTIVE REASONS
- XVI. INVESTMENT INCENTIVES FOR SCIENCE AND TECHNOLOGY PROJECTS

Answer:

We would appreciate more elaborations as to which elements of these programs are of concern as a number of these programs clearly do not contain prohibited elements.

Question 121

Additionally, the following programs listed in WT/ACC/VNM/13/Add.2 appear to provide incentives contingent upon the use of domestic over imported goods:

- I. PREFERENTIAL IMPORT TARIFF RATES CONTINGENT UPON LOCALISATION RATIOS WITH RESPECT TO PRODUCTS AND PARTS OF TWO-WHEEL MOTORBIKE AND MECHANICAL-ELECTRIC-ELECTRONIC INDUSTRIES
- VII. EXPORT REWARD
- XII. SUPPORT FOR INVESTMENT PROJECTS IN MANUFACTURING ENGINE OF TWO-WHEEL MOTORBIKE

Answer:

Viet Nam is willing to discuss with a view to addressing your concerns with respect to these three programs.

Question 122

Please describe the scope of directed lending from State-Owned Commercial Banks. Please provide statistics on directed lending through the Development Assistance Fund.

Answer:

Regarding directed lending, please find attached Annex I regarding the most recent statistics on lending through the Development Assistance Fund. Some further statistics for the previous period have also been provided in Viet Nam's Subsidies Notification (document WT/VNM/13/Add.2).

Question 123

Aspects of the Price Stabilization Fund which are maintained in the Export Promotion Fund (i.e., surcharges assessed based on difference between world and international prices) appear to be a price band. Use of these funds for export promotion may be an export subsidy.

Answer:

Viet Nam has agreed to bind at zero other duties and charges in its Schedule of Concessions and Commitments upon accession, pursuant to Article II:1(b) of the GATT 1994.

Question 124

Question 13 in WT/ACC/VNM/36: Are the tax incentives granted to export enterprises identical to the tax incentives granted to enterprises that do not export their goods? That is, are the tax incentives ones that are available to all enterprises, both foreign and domestic, regardless of whether or not they export their goods? Are the same tax benefits or incentives available to joint venture as well as wholly-owned companies?

Answer:

Both domestic and foreign invested enterprises (including joint-ventures and 100 per cent foreign owned enterprises) satisfying the exporting conditions are eligible for investment incentives on an equal basis.

Question 125

Question 13 in WT/ACC/VNM/36: With respect to the contractual nature of Vietnamese licenses, we note that in reviewing copies of some investment licenses, the word "contract" is used repeatedly to describe the obligations of government and investor to each other. Please confirm that the Government of Viet Nam views the investment licenses it issues as binding legal contracts.

Answer:

The word "contract" has never been mentioned in the Investment Licenses/Investment Incentives Certificate. The Investment Licenses demonstrate an administrative relation between the Government and investors.

Question 126

Question 13 in WT/ACC/VNM/36: Also, does the fact that tax incentives are listed in the investment license mean that the Government of Viet Nam is guaranteeing the provision of these incentives for export enterprises or enterprises using local materials?

Answer:

The Government of Viet Nam guarantees to grant investment incentives for export enterprises or enterprises using local materials.

Question 127

Question 13 in WT/ACC/VNM/36: What is the standard duration for an investment license?

Answer:

There is no standard duration for an investment licence. Viet Nam's legislation on foreign investment only stipulate the maximum duration for investment projects.

Question 128

Question 14 in WT/ACC/VNM/36: Does Viet Nam continue to provide licenses that guarantee subsidies determined to be prohibited in accordance with the WTO's Agreement on Subsidies and Countervailing Measures to foreign and/or domestic firms? Will Viet Nam notify these subsidies to the WTO? Will these prohibited subsidies be repealed and/or eliminated upon Viet Nam's accession to the WTO?

Answer:

Viet Nam shall notify its prohibited subsidies in accordance with the Agreement on Subsidies and Countervailing Measures and implement the commitments with respect to prohibited subsidies in conformity with its WTO accession commitments.

Question 129

Question 20 in WT/ACC/VNM/36: Please clarify how Viet Nam will remove the export requirement to receive investment incentives from licenses issued prior to Viet Nam's accession to the WTO. Will new investment licenses be issued? Will companies be notified that special investment incentives or subsidies will be removed?

Answer:

Viet Nam will promulgate legal documents to terminate the validity of prohibited subsidies under the form of investment incentives stipulated in the Investment Licenses in accordance with Viet Nam's accession commitments. Those enterprises being beneficiaries of such subsidies will be notified.

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

Question 130

Paragraph 193 should be updated to reflect the current status of the proposed Ordinance on Standardization, and its content (when approved); further information on the content of the Ordinance may necessitate changes elsewhere in the Working Party report as well.

Answer:

Viet Nam agrees to update this paragraph to reflect the latest status of the proposed Ordinance on Standardization as follows: To replace the sentence "He expected a new Ordinance on Standardization to be introduced in 2007" by "He expected a new Ordinance on Standardization to be introduced in late 2005".

Question 131

Proposed Ordinance and May 2005 Prime Minister Decisions relating to TBT implementation should be circulated to the Working Party so that their conformity with the TBT Agreement can be assessed.

Answer:

An unofficial English version of draft Ordinance on Standardization will be provided to the Working Party prior to its 10th Session.

Decision No. 444/2005/QD-TTg dated 26 May 2005 approving the scheme on implementation of the Agreement on Technical Barriers to Trade and Decision No. 114/2005/QD-TTg dated 26 May 2005 establishing and promulgating the Regulation on organization and operation of Viet Nam's Network of Notification Authorities and Enquiry Points on technical barriers to trade have been submitted to the Working Party through document WT/ACC/VNM/39/Add.1.

Question 132

Paragraphs 194 and/or 196 should clarify whether notice is published of proposed technical regulations which reference or incorporate (in whole or in part) previously approved standards, and an opportunity for comment by interested parties is provided.

Answer:

Article 62.2, 65.4 and 66.3 of the amended Law on the Promulgation of Legal Normative Documents provide for the obtaining of opinions and comments on draft legal normative documents of the Government, Prime Minister and ministries or ministerial agencies as follows: the Government Office publishes these draft documents on the mass media and on the internet so that agencies, organizations and individuals can participate with their opinions or ministries or ministerial agencies in charge of drafting the documents send the draft documents to agencies, organizations and individuals concerned for comment.

According to the Circular No.04/2005/TT-VPCP dated 21 March 2005, available through WT/ACC/VNM/39/Add.1, guiding the implementation of the Government's Decree No. 104/2004/ND-CP dated 23 March 2004 on the Official Gazette of the Socialist Republic of Viet Nam regarding activities related to the Official Gazette of the Central Government, draft legal normative documents that are required to obtain opinions and comments from agencies, organizations and individuals will be published in a supplement to the Official Gazette.

As a component of the system of legal normative documents, technical regulations are also governed by the above Law and Circular.

Therefore, Viet Nam agrees to insert a sentence "For this purpose, *inter alia*, notices of proposed technical regulations may be published in the Appendix of the Official Gazette" after the sentence "Draft technical regulations ... for comment".

Question 133

Paragraph 195, first sentence, should be deleted and information updated to reflect the actual situation in light of the Law on the Promulgation of Legal Normative Documents and any relevant amendments.

Answer:

Viet Nam agrees with this comment and would update the relevant paragraph as suggested.

Question 134

Comprehensive and updated information is needed to fully understand Viet Nam's approach to conformity assurance.

Answer:

This issue has been elaborated in paragraphs 196, 197, 198 and 199 of document WT/ACC/SPEC/VNM/5.

Question 135

What is the current status of the lists of goods subject to mandatory inspection and certification referenced in the Working Party Report? Proposed changes to the lists should be provided to Working Party Members for their review.

Answer:

Revisions to the list of imported and exported goods subject to State quality inspection issued in association with the Decision No. 117/2000/QD-BKHCHNMT of the former Ministry of Science, Technology and Environment (now the Ministry of Science and Technology) are underway. Viet Nam will provide new list to the Working Party once it is approved by the Prime Minister.

Question 136

Copies of the following documents, if still valid, should be provided to WP members for their review:

- **Decision No. 2424/2000/QD-BKHCHNMT (12 December 2000) introducing a procedure for supplier's declaration of conformity (referenced in Working Party report, paragraph 197);**
- **MOST Decision No. 1091/1999/QD-BKHCHNMT (22 June 1999), which simplified inspection procedures and related STAMEQ regulations (Paragraph 198); and,**
- **Inter-Circular No. 37/2001/TTLT/BKHCHNMT-TCHQ (28 June 2001) which details procedures for registering for quality inspection (Paragraph 199).**

Answer:

The Decision No. 1091/1999/QD-BKHCHNMT dated 22 June 1999 on simplifying inspection procedures and other related-regulations of the Directorate for Standards and Quality (paragraph 198) has been already provided to the Working Party (Please refer to Annex 1 of document WT/ACC/SPEC/VNM/5, page 131).

The Decision No. 2424/2000/QD-BKHCHNMT (12 December 2000) introducing a procedure for supplier's declaration of conformity (referenced in Paragraph 197) and the Inter-Circular No. 37/2001/TTLT/BKHCHNMT-TCHQ (28 June 2001) which details procedures for registering for quality inspection (paragraph 199) are available through WT/ACC/VNM/39/Add.1.

Question 137

Please clarify progress, if any, of the statement that the Government is considering establishing a National Accreditation Council (Paragraph 192).

Answer:

Viet Nam shall notify the Working Party of the establishment of its National Accreditation Council once the Decision of its establishment is promulgated.

Question 138

To the extent possible, the Working Party report should be updated in the light of information provided by Viet Nam in response to questions raised in WT/ACC/VNM/36 (7 April 2005), and as noted above.

We support the commitment in Paragraph 203 of WT/ACC/SPEC/VNM/5.

Answer:

We agree with the commitment text.

- **Sanitary and phytosanitary measures**

Question 139

We have reviewed some, but not all of Viet Nam's new legislation on SPS issues covering veterinary requirements and food hygiene and safety and have provided comments to Viet Nam bilaterally. Please provide the text of the similar legislation on plant health and safety and on any additional legislation that is intended to bring Viet Nam's SPS regime into compliance with the WTO SPS Agreement.

Answer:

An unofficial English translation of the Ordinance on Plant Protection and Quarantine and its implementing Decree shall be provided as soon as translation is completed.

Question 140

What steps is Viet Nam taking at the national and agency level to implement an open and public comment process at the draft stage for food safety standards and regulations *vis-à-vis* SPS and TBT Agreement obligations?

Answer:

According to Article 3 of the Law on the Promulgation of Legal Normative Documents No. 02/2002/QH11, in the process of preparation of new legal normative documents, the drafting body is required obtain opinions from all relevant bodies, organizations and individuals, and in particular, from subjects directly affected by the legal instrument. This process is to be conducted in a suitable form and to a reasonable extent. Opinions on draft legal normative documents should be taken into consideration for improving these documents.

Accordingly, in the process of formulating legal normative documents and regulations related to SPS and TBT, the drafting agencies are required to seek for opinions and comments from all relevant bodies, organizations and individuals.

Question 141

Paragraphs 204 and 211: How will further international assistance help Viet Nam bring its risk assessment techniques and procedures into conformity with Articles 2.2, 5.1, 5.2, and 5.3 upon accession? How close is Viet Nam to achieving this goal?

Answer:

Viet Nam has developed the SPS Status Report and the SPS Action Plan wherein its needs of technical assistance for implementing the SPS Agreement, including technical and procedural assistance in assessment of disease risks based on the framework of the SPS checklist of the WTO, have been specified.

Viet Nam is now seeking for technical assistance from international organizations and developed countries in training Vietnamese experts in the field of risk assessment, including equipment and data assistance for risk assessment.

Under a project funded by the World Bank in coordination with the Ministry of Agriculture and Rural Development and other related ministries, a detailed Report on SPS and the Action Plan on Improving SPS management, including analysis and management of Viet Nam's disease risks, have been developed and are expected to be completed in September 2005.

In addition, Viet Nam is building the National Program on Food Safety and Hygiene for the period 2005-2010.

Given its own efforts and technical assistance from international donors and WTO Members, Viet Nam is of the view that its compliance with Articles 2.2, 5.1, 5.2 and 5.3 of the SPS Agreement upon accession is within reach.

Question 142

Paragraph 205: Can Viet Nam explain the current status of its review and process of amending its subsidiary legislation to ensure consistency with the amended Ordinance on Plant Protection and quarantine?

Answer:

The Ministry of Agriculture and Rural Development has worked out a plan and timetable for revising necessary legal documents to ensure the consistency with the Ordinance on Plant Protection and Quarantine and the SPS Agreement.

Question 143

Paragraph 206: Can Viet Nam provide a status report on improvements to its veterinary hygiene and food safety inspection procedures and inspection procedures for veterinary medicines and vaccines?

Answer:

Veterinary hygiene and food safety inspection procedures and inspection procedures for veterinary medicines and vaccines are specified in details in the Ordinance on Veterinary and the implementing Decree No. 33/2005/ND-CP, the Ordinance on Food Safety and the implementing Decree No. 163/2004/ND-CP.

Question 144

Paragraph 213: What steps is Viet Nam taking to integrate the WTO national notification authority and enquiry point obligations into the policy and commitments of each of its agencies that are responsible for food, plant, and animal safety?

Answer:

To fulfil the notification authority and enquiry point obligation, the Prime Minister issued the Decision No. 99/2005/QĐ-TTg dated 9 May 2005 on the establishment of the National SPS Notification and Enquiry Point (hereinafter referred to as Viet Nam SPS Office) and appointed the Ministry of Agriculture and Rural Development the focal point to perform such obligation.

Under this Decision, concerned ministries shall, within their respective scope of responsibilities, coordinate with the Ministry of Agriculture and Rural Development and Viet Nam SPS Office to carry out the obligation of SPS notification and enquiry in accordance with the provisions of the SPS Agreement.

The Ministry of Agriculture and Rural Development is proactively coordinating with other ministries in setting up Viet Nam SPS Office and drafting the Regulation on Operation Coordination of the Office to submit to the Prime Minister, including provisions on process of gathering comments on food safety standards and regulations in order to perform the obligations set forth in the SPS Agreement.

Question 145

Regarding currently standing poultry entrance requirements, we are concerned that Viet Nam is mandating burdensome obligations on foreign suppliers by requiring that exporting countries certify that the products originated from disease free zones and that anti- and post mortem inspections indicate that it is free from every disease. As written, Viet Nam's law conflicts with the articles concerning national treatment, harmonization, regionalization and burdensome entry requirements of the SPS Agreement. When will Viet Nam rescind this obligation from foreign suppliers and bring its import requirements for poultry into conformity with the SPS Agreement?

Answer:

Veterinary hygiene requirement for poultry entrance and procedures for veterinary drug and vaccine inspection are set forth in Articles 38, 39, 40 and 41 of the Decree No. 33/2005/ND-CP and published in the English on the website www.mard.gov.vn/dah of the Veterinary Agency.

However, Viet Nam is still continuing to review, amend and supplement poultry entrance measures and requirements to ensure them in conformity with the SPS Agreement.

Question 146

In general, the section should be revised and organized along the following lines:

- **Identify the central government authorities responsible for food safety, plant and animal health;**
- **Identify the relevant legal basis for SPS requirements;**
- **Explain the procedures for SPS regulation of domestic production, imports, and exports in each of the three areas;**

- **Develop a section that explains how Viet Nam's SPS system has been revised, both with respect to the legislative basis and with respect to how the SPS regime will be operated in compliance with the SPS Agreement, in a step by step approach (i.e., based on the framework of the SPS checklist); and**
- **As necessary, give a timeline for review and revision of SPS measures for compliance with the WTO SPS Agreement.**

Elements of a Commitment: That Viet Nam will amend its laws and rescind any existing SPS measures that do not comply with the SPS Agreement requirements prior to its accession; and additional commitment language relevant to specific SPS issues that are not definitively clarified may be necessary.

Answer:

We can agree to the following text:

The representative of Viet Nam confirmed that Viet Nam would apply the Agreement on the Application of Sanitary and Phytosanitary Measures from the date of accession without recourse to any transition period. The Working Party took note of this commitment.

- **Trade-related investment measures**

Question 147

We appreciate Viet Nam's commitment to implement fully the provisions of the TRIMs Agreement prior to accession.

Please explain how Viet Nam will eliminate existing TRIMs identified in WT/ACC/VNM/18/Rev.1 and how it will eliminate the 80 per cent export ratio requirement. For example, will Viet Nam abolish Decision No. 718/2001/QD-BKH dated 7 December 2001?

Answer:

The approach for the elimination of existing TRIMs has been presented in paragraph 276 and 278 of the Draft Working Party Report.

Question 148

We support the following revised text to paragraph 223

"The representative of Viet Nam confirmed that, Viet Nam would fully comply with the TRIMs Agreement upon its accession to the WTO. The Working Party took note of these commitments."

Answer:

We agree with the suggested text, which reads as follows:

"The representative of Viet Nam confirmed that, Viet Nam would fully comply with the TRIMs Agreement upon its accession to the WTO. The Working Party took note of these commitments."

- **Free zones, special economic areas**

Question 149

WT/ACC/SPEC/VNM/5, Paragraphs 231-235. Could Viet Nam please provide information on what types of industries are located in the industrial and export processing zones? We seek a full listing of the zones, the types of enterprises located there, their ownership characteristics, and the kinds of goods produced and exported.

Answer:

Industrial zones and Export processing zones are established to attract production and export activities as well as to provide services for these activities. Fields of investment in these zones are diversified, including electric and electronic components, footwear, handbag, textiles and garment, animal feeds, metal components, medicines, foods and beverages, etc. By the end of 2004, export processing zones and industrial zones have attracted 3,612 investment projects, of which 1,773 are FDI projects and 1,839 are domestic investments, with total registered capital amounting to US\$ 15.06 billion and VND 109,000.96 billion respectively. Out of 3,612 investment projects, 92 per cent are from private investment sources (including both domestic and foreign sources) and 8 per cent are from State-owned enterprises. A full list of Industrial Zones and Export Processing Zones is provided herewith (Annex V). Viet Nam is trying to fill up existing export processing zones and industrial zones as well as to limit the establishment of new zones unless for the purposes of regional development and implementation of hunger and poverty eradication in socio-economic disadvantaged areas.

Question 150

What portion of current output and exports, by relevant sector, is accounted for by firms located in the zones? What are Viet Nam's plans for expanding the zones?

Answer:

Viet Nam is collecting data on capacity of production and export of enterprises operating in the industrial zones and export processing zones. However, this task is very difficult due to the technical limitation of Viet Nam's existing statistical system.

Viet Nam is trying to fill up existing export processing zones and industrial zones as well as to limit the establishment of new zones unless for the purposes of regional development and implementation of hunger and poverty eradication in socio-economic disadvantaged areas.

Question 151

Viet Nam has indicated that it has established several industrial zones, export processing zones and high-tech parks, in which companies receive privileged tax treatment. The information provided to date on these zones does not specifically state what types of privileged tax treatments or other benefits (and in what amounts) companies can avail themselves of in these zones. Please provide a complete description of the benefits and eligibility criteria. Do the benefits differ between each type of zone/park? If so, please explain the difference.

Answer:

Most of investment incentives for industrial zones and export processing zones are granted in forms of exemption, reduction of corporate income tax and there is no discrimination between domestic and foreign investors (Please refer to the Subsidy Program III and IV in document

WT/ACC/VNM/13/Add.2). In addition, incentives on corporate income tax which are contingent upon export performance in industrial zones have been abolished. Thus, incentives for enterprises locating in these zones are same as those for enterprises locating outside the zones (incentives or special incentives). Enterprises locating in high-tech and special economic zones are eligible for investment incentives as for the projects invested in the especially encouraged investment areas (all border economic zones, economic zones, open economic zones are located in socio-economic especially disadvantaged areas).

Question 152

What is the procedure for locating in the zones? Which ministries regulate their operation?

Answer:

Procedures for locating in export processing zones, industrial zones and other special economic zones are applied as general regulations for foreign invested projects. In accordance with their respective functions, competences, and mandates, various Government agencies have different responsibilities in regulating the operations of export processing zones, industrial zones and other economic zones (such as Ministry of Planning and Investment, Ministry of Industry, Ministry of Construction, Ministry of Science and Technology, Ministry of Trade, Ministry of Home Affairs). However, provincial Management Boards of industrial zones, export processing zones are authorized and designated to implement certain administrative functions over the operation of these zones, etc. For example, Ministry of Planning and Investment authorized provincial management boards of industrial zones, high-tech zones, economic zones, to grant, adjust, amend and withdraw foreign investment licences for projects of less than US\$ 40 million; Ministry of Trade, Ministry of Labours, War Invalids and Social Affairs authorized the management boards of industrial zones and export processing zones to implement certain administrative functions under their management.

Question 153

Who in the Viet Nam government would be principally responsible for ensuring WTO compliance of their operations?

Answer:

Ministry of Planning and Investment would be principally responsible for ensuring the WTO compliance of their operations.

Question 154

Under Annex II and III of the SCM Agreement, import duty tax rebate schemes allow for exemption of duties only of "inputs that are consumed in the production of the exported product (making normal allowance for waste)." Please confirm that Viet Nam's incentives with respect to exemptions from import duties are consistent with Annex II and Annex III of the SCM Agreement. The information provided by Viet Nam in WT/ACC/VNM/13/Add 2 and recorded in WT/ACC/SPEC/VNM/5 (paragraph 235) is inadequate.

Answer:

Viet Nam confirm that regulations on import duties exemption for invested projects locating in and outside the industrial zones and export processing zones as well as special economic zones are consistent with Annex II and Annex III of the SCM Agreement.

Question 155

Is there any legislation in the pipeline to deal with the WTO inconsistencies identified to date?

Viet Nam will prepare legislation to ensure WTO-consistency (if any) after agreeing on the commitments in this area.

Question 156

While this language in paragraph 235 provides a useful framework for discussion of an adequate commitment for this section of the Working Party report, we take exception to the reference to a 9 year transition to eliminate the subsidies provided in the zones, even if the export promotion or local content conditionality is removed.

We offer the following suggested alternative language to the text currently found in paragraph 235 of the WT/ACC/SPEC/VNM/5:

XX. "The representative of Viet Nam confirmed that from the date of accession the Government of Viet Nam would ensure enforcement of its WTO obligations in its export processing zones and industrial zones and any other zones with similar incentives and objectives. In this regard, the representative confirmed that, prior to accession, the Laws on foreign investment and domestic investment and related regulations would be amended to eliminate any requirements for establishment in the zones or receipt of benefits provided to firms within the zones conditioned on use of local goods or export performance. All subsidies within the meaning of Article 3 of the WTO Agreement on Subsidies and Countervailing Duties would be eliminated from the date of accession. In addition, from the date of accession, goods produced in export processing zones or industrial or other zones with similar benefits and objectives under tax and tariff provisions that exempt imports and imported inputs from tariffs and certain taxes would be subject to normal customs formalities when entering the rest of Viet Nam, including the application of tariffs and taxes. The Working Party took note of these commitments."

Answer:

Viet Nam would like this commitment be put into brackets as more discussion is needed.

- **Government procurement**

Question 157

Requests for Information or Clarifications That Should Be Reflected in the Text:

What proportion of GDP does government purchase comprise?

Answer:

Government purchase accounts for about 14 per cent of GDP.

Question 158

Please provide a copy of the draft Ordinance on Procurement.

Answer:

Viet Nam shall provide an unofficial English version of the draft Law on Public Tendering and Procurement as soon as the translation is completed.

Question 159

We urge Viet Nam to become an observer to the GPA immediately upon accession to the WTO Agreement and to initiate negotiations for accession to the GPA by tabling an Appendix 1 offer immediately thereafter.

Answer:

Viet Nam would consider to become an observer to the Government Procurement Agreement after WTO accession.

- **Transit**

Question 160

Please describe the customs procedures that apply to goods in transit.

Answer:

Pursuant to Article 40 of the Customs Law:

1. Transited goods must go through Customs procedures at the first entry border-gate and the last exit border-gate, be subject to Customs supervision during the process of transportation on Vietnamese territory.
2. For goods transited not across land territory, transited and warehoused within the border-gate areas, the transit permits shall not be required. For goods transited across land territory, or warehoused outside the border-gate areas, or for transited goods for which permits are required according to the provisions of Vietnamese law, permits issued by the competent State bodies must be produced.
3. The physical inspection of transited goods shall be conducted only in cases where signs of law violation are detected.
4. Transited goods may be sold in Viet Nam only when it is so permitted by the competent Vietnamese State bodies and must go through the Customs procedures like import goods.

Documents to be submitted when carrying out customs procedures for transited goods:

- A list of the transited goods, submitted by the customs declarer or his/her representative to the border-gate customs office for transited goods which are straightly transported in their original conditions; transshipped onto the same land, railway, river, sea or air transport means (except for transited goods which are straightly transported by air);
- The customs declaration for the transited goods and the list of transited goods, submitted by the customs declarer or his/her representative to the border-gate customs office for transited goods which need to be warehoused or transshipped onto another type of transport means.

Question 161

On what basis may Customs decline transit to goods?

Answer:

Customs authorities, on the basis of the list of the transited goods, customs declaration and/or transit permit (if required) issued by the competent agencies, allow transited goods to go through customs procedures or not.

Question 162

Please describe the procedure for obtaining approval from customs to warehouse goods in transit. Does Customs charge a fee for approval of a request to warehouse goods in transit? If so, how is it assessed?

Answer:

- Viet Nam's Customs does not charge any fee for approval of a request to warehouse goods in transit;
- If transited goods are kept at customs bond warehouses or bonded warehouses, customs shall charge a fee for warehousing in accordance with the Inter-ministerial Circular No. 71/2000/TTLT/BTC-TCHQ dated 19 July 2000 jointly issued by the Ministry of Finance and the General Department of Customs; and
- Transited goods kept outside customs warehouses or bonded warehouses shall pay fees or charges to enterprises providing warehousing services at the rates specified by such enterprises.

Question 163

We would appreciate clarification of the following sentence in paragraph 250. "The requirement to obtain a transit license from the Ministry of Trade applied only to in-land or waterway transportation of round timber, to lumber, and to transiting goods subject to import or export prohibition." Does Viet Nam actually mean the following?

"The requirement to obtain a transit license from the Ministry of Trade applied only to in-land or waterway transportation of round timber and lumber, and to transiting goods subject to import or export prohibition."

Answer:

Yes.

Question 164

With respect to Table 14(b), what percentage of goods in transit require escort? How does Customs determine which cargoes require escort and which only need a Customs seal? Are there set guidelines? If so, what are they?

Answer:

Viet Nam customs authorities do not gather statistics of transited goods requiring escort. However, if it is impossible to seal the transited goods, they shall be escorted by customs officers.

Question 165

We would welcome clarification by Viet Nam as to how it will implement the general principle of freedom of transit as set out in Article V upon accession.

Answer:

Viet Nam's legislation provides for no restrictions on transit that are in violation of Article V of the GATT.

Question 166

We support the commitment in paragraph 251; please remove the brackets.

Answer:

We agree with the commitment, please remove the brackets.

- **Agricultural policies**

Question 167

Statements in this section concerning measures applied to agriculture should be checked against the treatment of the same issues in other parts of the report, to ensure internal consistency within the Working Party report.

- (a) **Imports (paragraphs 252-253)**

The text should provide clearly and consistently the details of all WTO-inconsistent import measures currently in place on agricultural products, and, as relevant, Viet Nam's plans for removing them.

For example, paragraph 253 states "Viet Nam did not apply import quotas on rice". However, in WT/ACC/VNM/36 Viet Nam says it intends to remove its import quotas on rice upon accession (Question 260). This apparent contradiction should be eliminated.

Elsewhere in Para 80-82, the text states that trading rights restrictions will be applied to rice. This information should be included with the information on quotas.

Answer:

Export quota for rice had been eliminated by virtue of the Decision No. 46/2001/QD-TTg dated 4 April 2001 by the Prime Minister.

Question 168

Special Agricultural Safeguards (SSGs) noted in paragraph 252: Members have made it clear that SSGs are not a provision available to acceding governments. Viet Nam should indicate that it no longer seeks recourse to SSGs.

Answer:

Viet Nam will reflect the results of bilateral negotiations on market access with respect to SSGs when such process is completed.

Question 169

Viet Nam has stated that it already applies no import surcharges and that, therefore, the surcharges authorized based on the price differential between the domestic price and international price would no longer be collected. This information needs to be reflected in this

part of the working party report, and Viet Nam should plan to change its domestic legislation to reflect its commitment.

(b) Exports (paragraphs 254 – 255)

There is insufficient description in this section of the Export Promotion Fund and its predecessor the Price Stabilization Fund (see answer to Question 261 in WT/ACC/VNM/36).

Answer:

Please see Viet Nam's Subsidies Notification (WT/ACC/VNM/13/Add.2) for more information.

Question 170

(c) Internal Policies (paragraphs 256-264)

Paragraph 257 detailing the programs in the "green box" should be deleted. Instead, there should be a simple reference to the commitments on domestic supports (with the appropriate WTO Document citation) which will be included in the GATT Schedule of Concessions attached to the Working Party report.

Paragraphs on export subsidies belong under Exports, not under Internal Policies.

Please remove the bracket from the commitment not to utilize export subsidies.

We reserve the right to make additional suggestions later in the process, depending on how the issues develop.

Answer:

We agree with the following commitment:

The Representative of Viet Nam agreed that, upon accession, Viet Nam 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 Viet Nam's rights and obligations arising from WTO existing and future rules. The Working Party took note of this commitment.

- Trade in civil aircraft

Question 171

We request that Viet Nam join the Agreement on Trade in Civil Aircraft upon accession.

Answer:

Viet Nam would consider to join the Agreement on Trade in Civil Aircraft after WTO Accession.

- Textiles regime

Question 172

Viet Nam should update paragraph 267 with statistics on the growth of its textile and garment industry (including investment and job creation) and exports since 2001. A table identifying major export markets with export volume would assist Members to evaluate this section.

Answer:

It is expected to have more than 2 million labourers in textile and garment industry by the end of 2005.

In 2004, total export value of textile and garment was UD\$ 4.386 billions.

Total export value of the first 6 months of 2005 was US\$ 2.052 billions, a 0.4 per cent increase as compared with the same period last year. The export value of those subject to quotas belonging to 25 categories as stipulated in Viet Nam – U.S. Textiles and Clothing Agreement reached US\$ 783.7 million, a nearly 10 per cent decrease as compared with the same period of 2004.

Total export value of the first 7 months of 2005 was only US\$ 2.54 billion, a 0.2 per cent increase as compared with the same period last year.

V. TRADE-RELATED INTELLECTUAL PROPERTY REGIME

Question 173

Requests for Information or Clarifications That Should Be Reflected in the Text:

We have provided a separate paper to Viet Nam containing comments on its draft IPR Law. This section may need further editing to reflect the enactment of this law.

Answer:

The 5th draft of the Intellectual Property Law has been amended as commented upon by the National Assembly's members at the 7th session of the XI Legislature. Comments have also been sought from other organizations and individuals. In August 2005, the National Assembly's members specializing in this issue will discuss in details this draft Law. Viet Nam's national Assembly is expected to adopt the Intellectual Property Law at the 8th session in November 2005.

After the promulgation of the Intellectual Property Law, the Government and relevant authorities will issue legal documents guiding the implementation of this Law.

- **Geographical indications, including appellations of origin**

Question 174

Question 274, WT/ACC/VNM/36: Viet Nam was asked to clarify "how the exclusive rights of trademark holders will be protected with respect to potentially infringing geographical indications" (TRIPS 24.5). Viet Nam responded "...that the rights derived from the trademark shall not be affected by the protection of the geographical indication." It appears, based on this response, that trademarks in Viet Nam would be allowed to coexist with confusingly similar and later in time geographical indications.

Please explain how such a system is consistent with the exclusive rights given to trademark owners under TRIPS.

Answer:

The allowance of coexistence between trademarks and geographical indications is consistent with TRIPS Article 24.5, which would be understood that rights in a trademark in this extent are an exception of limitation of rights in its related geographical indications. In general principle, it is

impossible to protect trademarks that conflict with geographical indications, because such protection means that individuals would be conferred rights which must belong to a community. In the exceptional case, when a trademark used or registered in good faith prior to the application for the registration of the related geographical indications, such trademark would be allowed to coexist with geographical indications. Moreover, the rights in a trademark provided for in TRIPS Article 16.1 are not the absolute exclusive rights but limited by exceptions permitted in TRIPS Article 17. Accordingly, such a protection regime is fully consistent with TRIPS. However, provisions on excluding the protection of geographical indications which conflict with trademark rights previously acquired through registration or broad use would be considered to be included in the draft Intellectual Property Law, in a manner complying with TRIPS.

- **Enforcement**

Question 175

On the burden of proof in patent infringement actions, we understand that the Draft joint Circular between People's Supreme Court, People's Supreme Prosecution Institute and Ministry of Science and Technology guiding the judgment of cases relating to industrial property rights was to have been promulgated and published by the end of 2004.

Please advise if it is now available for review and comment, and if not, when it is expected to be made available publicly.

Answer:

The plan to promulgate the joint Circular between People's Supreme Court, People's Supreme Prosecution Institute and Ministry of Science and Technology guiding the judgment of cases relating to industrial property rights was cancelled as Viet Nam determines to draft the Intellectual Property Law. Provisions on burden of proof in infringement actions to patent in form of a process have been included in the draft Intellectual Property Law. Intellectual Property Law is expected to be passed in late 2005.

Question 176

We support the commitment in Paragraph 359; please remove the brackets.

Answer:

We agree to remove the brackets.

Question 177

We submit the following text for insertion between paragraphs 299 and 300 of WT/ACC/SPEC/VMN/5:

299bis. "Some members observed that it had been brought to their attention that some agencies of the government of Viet Nam used computer software that had not been authorized by the right holder. They requested such a practice should be eliminated by Viet Nam in the context of its accession to the WTO and the implementation of the obligations in the WTO Agreement on TRIPS. The Representative of Viet Nam confirmed that prior to the date of accession, Viet Nam would issue appropriate legal instruments mandating that all government agencies use only legitimate computer software and only as authorized by the right holder. Such measures shall actively regulate the acquisition and management of all software for use by government

agencies. Such management may take the form of procedures, such as preparing and maintaining inventories of software present on agency computers, and inventories of existing software licenses. The Working Party took note of these commitments."

Additional commitment language may become necessary after we have completed our review of Viet Nam's IPR laws.

Answer:

Viet Nam has been making its best efforts in establishing WTO consistent legal framework and in implementing the TRIPS Agreement regarding the copyright of software.

VI. POLICIES AFFECTING TRADE IN SERVICES

Question 178

The text will evolve as we negotiate commitments in Viet Nam's services schedule.

We are seeking detailed commitments regarding transparency and licensing, especially with respect to financial services. Elements of such commitments include:

- a clear definition of public utility and commitments on how Viet Nam's measures relating to culture and national identity issues will be applied;
- publication of measures prior to their implementation;
- publication of a list of all organizations, including those organizations delegated such authority from national authorities, with responsibility for licensing service providers and any changes to that list; and
- specific commitments pertaining to licensing, such as regular scheduling of examinations, notification of the status of an application for a license upon request from the applicant, meaningful deadlines for decisions, and providing information regarding the reasons for denial of a license.

In addition, there may be sector specific categories, such as financial services including insurance, and telecommunications, which require additional elaboration.

Answer:

Viet Nam is looking forward to receiving more specific text for our consideration.

VII. TRANSPARENCY

Question 179

Requests for Information or Clarifications That Should Be Reflected in the Text:

We appreciate Viet Nam's commitment to transparency and the summary of existing transparency obligations found in paragraph 371 of the Draft Report. We have a number of questions with respect to the Law on Enactment of Legal Documents (as amended) and the new Law on Promulgation of Legal Documents of People's Councils.

Is there a standard, government-wide process for soliciting public comment on draft legal instruments? If so, please describe it. If not, please advise if Viet Nam intends to establish a standard process for soliciting public comment.

Answer:

The current Law on Enactment of Legal Normative Documents (as amended) of Viet Nam does provide for a general standard government-wide process for soliciting public comments on draft legal instruments. Please see the Law's Articles 40, 62, 65, 66, 70 as follows:

Article 40

Contribution of opinions to draft laws, draft ordinances

1. Citizens contribute their opinions to draft laws, draft ordinances through their bodies, organizations, directly, or by sending letters of opinions to the Office of the National Assembly, drafting bodies, organizations or through the mass media.
2. The Viet Nam Fatherland Front and its member organizations, State bodies, economic organizations, social organizations, units of the people's armed forces shall have the responsibility to organize and facilitate contribution of opinions to draft laws, draft ordinances by citizens belonging to their organizations, bodies, units.

Article 62

Participating by providing opinions on a draft resolution or decree

1. Depending on the nature and contents of a draft resolution or decree, the drafting agency shall send a copy of the draft to the Committee for Ethnic Minorities, the Viet Nam Fatherland Front, the Viet Nam Labour Federation, the People's Supreme Court, the People's Supreme Procuracy, agencies and organizations concerned, and to People's Councils and People's Committees of provinces and cities under central authority (hereinafter both referred to as provincial) in order to organize the obtaining of opinions.
2. Depending on the nature and contents of a draft resolution or decree, the Prime Minister of the Government may assign the Government Office to publish the draft on the mass media and on the internet so that agencies, organizations and individuals can participate with their opinions.

Individuals may contribute opinions on a draft resolution or decree via their agencies or organizations, directly or by sending a letter to the Government Office or to the drafting agency or via the mass media.

3. The drafting agency of a draft resolution or decree shall be responsible to research opinions which are contributed in order to accept revision of the draft resolution or decree and shall report and explain their receipt of opinions".

Article 66

Preparation, promulgation of decisions, directives, circulars of ministers, heads of ministerial equivalent bodies, heads of government bodies

1. Ministers, heads of ministerial equivalent bodies, heads of government bodies shall delegate and direct their subsidiary units in the preparation of draft decisions, directives, circulars;
2. The delegated drafting unit has the responsibility to study and prepare the draft;
3. Depending on the nature and contents of each draft decision, directive, circular, the draft may be circulated for opinions of ministries, ministerial equivalent bodies, government bodies, provincial people's committees and relevant bodies, organizations, individuals;
4. The delegated drafting body shall amend the draft and send to ministers, heads of ministerial equivalent bodies, heads of government bodies the draft decision, directive, circular and opinions of the relevant bodies, organizations, individuals;

5. Ministers, heads of ministerial equivalent bodies, heads of government bodies shall consider, sign decisions, directives, circulars.

Article 70

Drafting and promulgating decisions, directives and circulars of the Chief Justice of the People's Supreme Court and of the Director of the People's Supreme Procuracy.

1. The Chief Justice of the People's Supreme Court shall organize and direct the drafting of a decision, directive or circular of the Chief Justice of the People's Supreme Court.

The Council of Judges of the People's Supreme Court shall discuss and provide their opinion on a draft decision, directive or circular of the Chief Justice of the People's Supreme Court.

Depending on the nature and contents of a draft decision, directive or circular, the Chief Justice of the People's Supreme Court shall decide whether to send the draft to the following to obtain their opinions: the Ministry of Defence, the Standing Committee of provincial People's Councils, local People's Courts and the agencies, organizations and individuals concerned.

The Chief Justice of the People's Supreme Court shall sign a decision, directive or circular.

2. The Director of the People's Supreme Procuracy shall organize and direct the drafting of a decision, directive or circular of the Director of the People's Supreme Procuracy.

The Procuracy Control Committee shall discuss and provide their opinion on a draft decision, directive or circular of the Director of the People's Supreme Procuracy. Depending on the nature and contents of a draft decision, directive or circular, the Director of the People's Supreme Procuracy shall decide whether to send the draft to the following to obtain their opinions: the People's Supreme Court, the Ministry of Justice, local People's Procuracies, the Military Procuracy and the agencies, organizations and individuals concerned. The Director of the People's Supreme Procuracy shall sign a decision, directive or circular.

Further, there are under-law regulations of the government that guide how process is conducted, such as the Decree 104/2004/NDD-CP of the Government on the Official Gazette, Circular 04/2005/TT-VPCP guiding the implementation of the Decree 104/2004/ND-CP, the Directive 28/2001/CT-TTg dated 28/11/2001 of the Prime Minister on The Continuous Improvement of the Business Environment, the Decree 101/CP dated 23 September 1997 of the Government implementing the Law on Enactment of the Legal Normative Documents (this Decree is being changed to be more specific). Those under law regulations have shaped the process used for soliciting public comments on the draft legal instruments. The practice is that the drafting entities circulate the draft legal instruments to the potentially-affected organizations and individuals or published them in newspapers for the public to comment. Under the Directive 28/2001/CT-TTg mentioned above, the drafting ministries and agencies "are required to seek comments from businesses through the Viet Nam Chamber of Commerce and Industry to draft any policies or rules that affect the business operations". The drafting agencies organise workshops and seminars to seek comments on the draft from the interested persons. To make the process of drafting and approving legal normative documents more transparent, Viet Nam has been working on the revisions of the Decree 101/CP of the Government.

Question 180

What is the specific time period that government entities drafting legal instruments must provide for public comment?

Answer:

The current Law on Enactment of Legal Normative Documents of Viet Nam does not provide for a specific time period that government entities drafting legal instruments must provide for public comment, leaving the time frame to the drafting entities to determine depending on the degree of complicity and the importance of these draft legal instruments.

Question 181

In Article 3.3 of the Law on Enactment of Legal Documents (as amended), what is meant by the sentence, "Opinions ... must be investigated in order to accept revision of the ... draft document"?

Answer:

In Article 3.3 of the Law on Enactment of Legal Normative Documents (as amended), the sentence "Opinion ... must be investigated in order to accept revision of the ... draft document" in English is not really precise due to the poor translation. The sentence must be "The collected comments on the draft legal instruments shall be studied to improve the draft legal instruments". Basically, the sentence says that the drafting agency, after collecting the public comments, must synthesize, analyze, evaluate the public comments and put forth proposals for revising the draft legal instruments.

Question 182

When a draft legal instrument is submitted to the appropriate decision-making body, are written public comments included as attachments?

Answer:

When a draft legal instrument is submitted to the competent agencies, the public comments must be attached to the draft legal instrument.

Question 183

After a drafting committee has revised a draft legal instrument according to the recommendations of the relevant decision-making body, is there a second period of public comment before the draft is returned to the decision-making body for reconsideration?

Answer:

The Law on Enactment of Legal Normative Documents does not provide specifically how many times a draft legal normative documents may be commented by the public. But, normally, draft legal instruments are only provided for public comments once. However, in some specific cases, the draft legal instruments may be provided for public comments for more than once, but only on selected issues where there are different views.

Question 184

Article 47 of the Law on Enactment of Legal Documents (as amended) appears to authorize the Standing Committee of the National Assembly to invite representatives from any agencies and organizations or individuals to address the Committee on a draft ordinance.

Please confirm that the Standing Committee has such authority, and please advise if the Standing Committee invites interested parties to comment on draft ordinances.

The law does not appear to give similar authority to the National Assembly or the Government. Why not?

Answer:

Article 47 of the Law on Enactment of Legal Normative Documents (as amended) states that the Standing Committee has such authority to invite relevant agencies or individuals for further comments on draft ordinances.

But, the Law does not provide a similar authority to the National Assembly and Government as different state organs may have different functions and working methods. However, this does not mean that the public do not have other chances (after the drafting agency had collected public comments during the drafting process) to comment on draft laws to be adopted by the National Assembly: Article 32.2 allows the lead examination committee of the National Assembly to "conduct survey and study the reality of the issues belonging to the contents of the draft... Agencies, organizations and individuals that have been contacted [by the committee] are required to provide information and materials to serve the examination... ". Further, Article 37.2(c) provides for one more chance where the invited interested parties make comments on submitted draft laws before the Standing Committee of the National Assembly.

As mentioned early that it is important that the public comments collected by the drafting agency must be sent together with the draft legal normative documents to the competent agency that shall have the final decision.

Question 185

Articles 62.2 and 65.2 of the Law on Enactment of Legal Documents (as amended) state that "Depending on the nature and contents of a draft resolution or decree, the Prime Minister of the Government may assign the Government Office to publish the draft on the mass media and on the internet so that agencies, organizations and individuals can participate with their opinions." This would appear to give the Prime Minister considerable discretion as to whether a particular draft resolution or decree would be published for comment.

Answer:

Article 62.2 and Article 65.2 of the Law on Enactment of Legal Documents (as amended) mention some of the ways and methods that may be used for seeking public comments. There are other ways and methods for collecting public comments as described in Item 1 above.

Question 186

Under what circumstances would a draft resolution or decree NOT be published for comment?

Now that the Law on Promulgation of Legal Documents of People's Councils and People's Committees has been enacted, this section should be updated to include the transparency requirements contained in that law.

Answer:

A draft resolution or decree shall not be published for comment if it relates to areas of state secret or national security, or the nature and contents of which do not require such publication.

Question 187

Articles 23, 30, and 41 of the Law on Promulgation of Legal Documents of People's Councils seem to indicate that entities drafting resolutions for People's Councils and/or Committees may set time limits for public comment to as little as five days after receipt of a copy of the draft resolution. Article 37 seems to set a minimum seven day limit.

- **Please confirm that local governments will provide at least 60 days for public comment on draft measures that would affect trade and/or investment.**
- **How would Viet Nam advise local governments of this requirement?**

Answer:

Regarding the time limits for public comment as stipulated in Article 23, 30 and 41 of the new Law on Promulgation of Legal Document of People's Councils and People's Committees, the Law sets only the minimum duration, not the maximum duration for comments by the affected persons. Therefore, it must not, in any way, be interpreted to mean that there is a limitation on the time duration for the public comment on the draft. The Law was drafted to be fully consistent with the WTO rules on transparency. Viet Nam has no plan at the moment to amend the Law. The implementing regulations for the Law are being drafted to ensure a uniform and consistent implementation of the Law throughout the country.

Question 188

We understand that Vietnamese ministries have used documents called "official letters," which are not defined as Legal Normative Documents in Viet Nam's Law on Promulgation of Legal Documents, to set policy. Most ministries will not share these documents, even if asked. In early 2005, the Government of Viet Nam issued Circular 04, which requires agencies to publish some Legal Normative Documents, and Instruction 08, which instructs Vietnamese Government agencies not to include legal norms in documents that are not defined by the Law on Promulgation of Legal Normative Documents.

Please confirm that the Government of Viet Nam will no longer use "official letters" as policy-setting documents, and that ministries will no longer follow policies contained in existing "official letters," or if they do, that they will do so in a manner that is consistent with WTO rules on transparency.

Answer:

"Official letters" are not recognized as legal normative documents under both the Law on Enactment of Legal Normative Documents (as amended) and the Law on Promulgation of Legal Document of People's Councils and People's Committees. The Government has tried to ensure the full implementation of the Laws and make the use of official letters more transparent and consistent with the WTO rules. Circular 04/2005/TT-VPCP and Directive 08/2005/CT-TTg of the Prime Minister is available through WT/ACC/VNM/39/Add.1.

In Viet Nam, official letters are not legal normative documents. Hence, they are not used to set rules. If legal norms are found in a few official letters, they are merely exceptions due to the negligence of issuing ministries or agencies. The Prime Minister has issued the Instruction No. 08/2005/CT-TTg dated 4 April 2005 to request heads of ministries, agencies and local government at all levels not to issue official letters containing legal norms and provisions.

The Government Office has also issued the Circular No. 04/2005/TT-VPCP dated 21 March 2005 in which a list of legal normative documents required to be published in the Official Gazette is specified.

It is to ensure that the WTO rules on transparency are complied with. The above circular is available through WT/ACC/VNM/39/Add.1.

Question 189

Please provide the Working Party with copies of Circular 04 and Instruction 08. We propose the following additional text and commitment text for the "Transparency" Section:

Publication of information on trade

xx. Some members of the Working Party requested information on Viet Nam's implementation of the transparency requirements prescribed in Article X of the GATT, Article III of the GATS and other WTO Agreements. They asked whether a legal obligation existed in Viet Nam to publish in an official journal all laws, regulations, decrees, judicial decisions and administrative orders or rulings of general application or other measures having similar effect relating to trade or economic policy "in such a manner as to enable governments and traders to become acquainted with them"; to what extent publication occurred prior to entry into force; and whether any such measures could enter into force without being published in the Official Gazette.

369. A Member also noted that Viet Nam was considering a bill to amend the Law on the Promulgation of Legal Documents . . .

370. The representative of Viet Nam said that as a general rule, stipulated in the Law on the Enactment of Legal Documents of 12 November 1996, . . .

371. Viet Nam had issued the Law on the Enactment of Legal Documents (amended in 2002) to ensure the transparency of the legal system of Viet Nam . . .

372. Draft trade-related legislation was made available to residents and non-residents for comment through the Vietnamese Chamber of Commerce and Industry, . . .

xx. The representative of Viet Nam confirmed that from the date of accession his government would fully implement Article X of the GATT 1994, Article III of the GATS and the other WTO transparency requirements, including those requiring notification, prior comment and publication. As such, all laws, regulations, decrees, judicial decisions and administrative rulings of general application pertaining to or affecting customs issues, trade in goods, services, intellectual property and the control of foreign exchange would be published promptly in the Official Gazette in a manner that fulfils the WTO requirements and no such law, regulation or other normative act or measure would become effective or be enforced prior to such publication. He further confirmed that the government had decided to expand the transparency provided with regard to legislation and measures having similar effect in the areas of trade and investment. In this regard, Viet Nam would, from the date of accession, establish or designate an official website (and possibly a supplemented official journal or an expanded Official Gazette), updated on a regular basis and readily available to WTO members, individuals, associations and enterprises, dedicated to the publication of all regulations, decisions, orders, administrative rulings of general application, and other measures pertaining to or affecting trade in goods, services, and TRIPS prior to enactment. The publication of such regulations and other measures would include, as appropriate, the names of the authorities (including contact points) responsible for implementing a particular measure and the effective date of the measure. Also, it would list the products and services affected by the particular measure, identified by appropriate tariff line and classification. The representative of Viet Nam confirmed that with respect to proposed measures Viet Nam would provide a reasonable period, i.e., no less than 60 days, for

members, individuals, associations and enterprises to provide comments to the appropriate authorities before such measures are adopted, except for those regulations and other measures involving national emergency or security, or for which the publication would impede law enforcement. He added that Viet Nam intended to post the contents of current and past editions of the Official Gazette on this website as well, and keep them current. The Working Party took note of these commitments.

Answer:

Copies of these documents will be provided as soon as translation is completed.

VIII. TRADE AGREEMENTS

Question 190

In the interest of transparency, we would appreciate Viet Nam's notification of its ASEAN Free Trade Area goods and services commitments to the Working Party.

Answer:

Viet Nam will fulfill its FTA notification obligation from the date of accession. The same notifications have presumably been made by other ASEAN countries who are WTO members.

Question 191

With reiterate our request for a description of Viet Nam's goods and services commitments as part of the AFTA-China FTA.

Answer:

The specific commitments on goods and service market access in the framework of ASEAN-China Free Trade Agreement are currently being finalized so Viet Nam is not yet able to notify these commitments to the Working Party. Viet Nam would make an arrangement with other ASEAN members and China regarding the notification of the agreement in conformity with WTO rules.

Question 192

We support the commitment text found in paragraph 379.

Answer:

We agree with the commitment.

ANNEX I

Credit Support Effected Via the Development Assistance Fund (DAF)

Statistics of Disbursement

				Unit: VND billion
No.	Form of subsidy	Year 2003	Year 2004	Note
I	Investment loans (i.e. medium- and long-term loan)	13,510	10,573	
1	Total disbursement	13,510.0	10,573.0	
	- Infrastructure (roads, public transport, reinforcement of agricultural irrigation and drainage system, etc.)	4,526.7	2,657.9	
	- Basic social services (electricity, water, public healthcare, education, housing, etc.)	4,307.1	2,290.7	
	- Agriculture and forestry (including processing, except for processing of aquacultural products)	1,532.8	1,315.9	
	- Other	3,143.4	4,308.6	
2	Average outstanding loans	25,075.8	33,820.4	
	- Infrastructure (roads, public transport, reinforcement of agricultural irrigation and drainage system, etc.)	8,369.0	10,249.7	
	- Basic social services (electricity, water, public healthcare, education, housing, etc.)	4,280.4	6,836.0	
	- Agriculture and forestry (including processing, except for processing of aquacultural products)	4,025.7	5,108.3	
	- Other	8,400.7	11,626.3	
3	Bad debts	989.4	1,232.5	As of 31 December of the year
	- Infrastructure (roads, public transport, reinforcement of agricultural irrigation and drainage system, etc.)	56.8	74.4	
	- Basic social services (electricity, water, public healthcare, education, housing, etc.)	32.6	40.1	
	- Agriculture and forestry (including processing, except for processing of aquacultural products)	277.9	355.3	
	- Other	622.1	762.7	
4	Level of actual subsidy (by offsetting interest differentials)	324.6	504.3	Equivalent to the differential between the borrowing interest incurred and the lending interest charged by DAF
	- Infrastructure (roads, public transport, reinforcement of agricultural irrigation and drainage system, etc.)	181.8	274.9	
	- Basic social services (electricity, water, public healthcare, education, housing, etc.)	5.8	19.7	
	- Agriculture and forestry (including processing, except for processing of aquacultural products)	58.7	91.9	
	- Other	78.4	157.1	
II	Short-term loans for export promotion			
1	Total disbursement	6,298.80	10,142.40	
2	Average outstanding loans	1,313.40	2,232.50	
3	Bad debts	8.7	50.7	As of 31 December of the year
4	Level of actual subsidy (by offsetting interest differentials)	7.3	3	Equivalent to the differential between the borrowing interest incurred and the lending interest charged by DAF
III	Post-investment interest supports	101.3	109.9	
IV	The total amount of supports from the State effected via DAF (I+II+III)	433.2	617.1	

ANNEX II

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 6(c)) and the restrictions listed in the attached Tables 6(a) and 6(b);
 - 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 6 (a): Schedule of Commitments on Import Trading Rights
(Attached to Commitments on Trading Rights)

Note: For the purpose of this table, the schedule starts from January 1st of the specified year

HS	Description	Schedule	Rationale
	Pharmaceutical products		
3003	Medicaments nesoi of mixtures, not dosage etc form...	2009	Products essential to human life, time is required to develop appropriate regulations
3003.10. 10	-- Containing amoxicillin (INN) or its salts		
3003.10. 20	-- Containing ampicillin (INN) or its salts		
3003.10. 90	-- Other		
3003.20. 00	- Containing other antibiotics		
3003.31. 00	-- Containing insulin		
3003.39. 00	-- Other		
3003.40. 10	-- Antimalarial		
3003.40. 90	-- Other		
3003.90. 10	-- Containing vitamins		
3003.90. 20	- - Containing analgesics or antipyretics, whether or not containing antihistamines		
3003.90. 30	- - Other preparations for the treatment of coughs and colds, whether or not containing antihistamines		
3003.90. 40	-- Antimalarial		
3003.90. 90	-- Other		
3004	Medicaments nesoi, mixed or not, in dosage etc fm...	2009	Products essential to human life, time is required to develop appropriate regulations
3004.10. 11	- - - Containing penicillin G or its salts (excluding penicillin G benzathin)		
3004.10. 12	- - - Containing phenoxymethyl penicillin or its salts		
3004.10. 13	- - - Containing ampicillin or its salts, for taking orally		
3004.10. 14	- - - Containing amoxycillin or its salts, for taking orally		
3004.10. 19	--- Other		
3004.10. 21	--- Ointment		
3004.10. 29	--- Other		
3004.20. 11	--- For taking orally		
3004.20. 12	--- Ointment		
3004.20. 19	--- Other		
3004.20. 21	--- For taking orally		
3004.20. 22	--- Ointment		
3004.20. 29	--- Other		
3004.20. 31	--- For taking orally		
3004.20. 32	--- Ointment		
3004.20. 39	--- Other		
3004.20. 41	- - - Containing gentamycines or derivatives thereof, for injection		
3004.20. 42	- - - Containing lincomycins or derivatives thereof, for taking orally		
3004.20. 43	--- Ointments		
3004.20. 49	--- Other		

HS	Description	Schedule	Rationale
3004.20. 51	- - - For taking orally		
3004.20. 52	- - - Ointments		
3004.20. 59	- - - Other		
3004.20. 60	- - Containing isoniazide, pyrazinamide or derivatives thereof, for taking orally		
3004.20. 90	- - Other		
3004.31. 00	- - Containing insulin		
3004.32. 10	- - - Containing hydrocortisone sodium succinate		
3004.32. 20	- - - Containing dexamethasone or its derivatives		
3004.32. 30	- - - Containing fluocinolone acetonide		
3004.32. 90	- - - Other		
3004.39. 10	- - - Containing adrenaline		
3004.39. 90	- - - Other		
3004.40. 10	- - Containing morphine or its derivatives, for injection		
3004.40. 20	- - Containing quinine hydrochloride or dihydrochloride, for injection		
3004.40. 30	- - Containing quinine sulphate or bisulphate, for taking orally		
3004.40. 40	- - Containing quinine or its salts and anti-malarial substances, other than goods of subheadings 3004.10 to 30		
3004.40. 50	- - Containing papaverine or berberine		
3004.40. 60	- - Containing theophylline		
3004.40. 70	- - Containing atropin sulphate		
3004.40. 90	- - Other		
3004.50. 10	- - Syrups and drops of vitamins, of a kind suitable for children		
3004.50. 20	- - Containing vitamins A, other than goods of subheading 3004.50.10 and 3004.50.79		
3004.50. 30	- - Containing vitamins B1, B2, B6 or B12 , other than goods of subheadings 3004.50.10, 3004.50.71 and 3004.50.79		
3004.50. 40	- - Containing vitamins C, other than goods of subheadings 3004.50.10 and 3004.50.79		
3004.50. 50	- - Containing vitamins PP, other than goods of subheadings 3004.50.10 and 3004.50.79		
3004.50. 60	- - Containing other vitamins, other than goods of subheadings 3004.50.10 and 3004.50.79		
3004.50. 71	- - - Containing B complex vitamins		
3004.50. 79	- - - Other		
3004.50. 90	- - Other		
3004.90. 10	- - Specialised medicines for cancer, AIDS or other intractable diseases		
3004.90. 21	- - - Sodium chloride solution		
3004.90. 22	- - - 5% glucose solution		
3004.90. 23	- - - 30% glucose solution		
3004.90. 29	- - - Other		
3004.90. 30	- - Antiseptics		
3004.90. 41	- - - Containing procaine hydrochloride		
3004.90. 49	- - - Other		
3004.90. 51	- - - Containing acetylsalicylic acid, paracetamol or dipyron (INN)		
3004.90. 52	- - - Containing chlorpheniramine maleate		
3004.90. 53	- - - Containing diclofenac		
3004.90. 54	- - - Analgesic balm oil, solid or liquid		

HS	Description	Schedule	Rationale
3004.90. 59	--- Other		
3004.90. 61	- - - Containing artemisinin, artesunate or chloroquine (INN)		
3004.90. 62	--- Containing primaquine		
3004.90. 69	--- Other		
3004.90. 71	--- Containing piperazine or mebendazole (INN)		
3004.90. 72	--- Containing dichlorophen (INN)		
3004.90. 79	--- Other		
3004.90. 80	-- Transdermal therapeutic systems (TTS) patches for cancer or heart diseases		
3004.90. 91	--- Containing sulpiride (INN), cimetidine (INN), ranitidine (INN), aluminium hydroxide or magnesium hydroxide or oresol		
3004.90. 92	- - - Containing piroxicam (INN) or ibuprofen (INN)		
3004.90. 93	- - - Containing phenobarbital, diazepam, chlorpromazine		
3004.90. 94	--- Containing salbutamol (INN)		
3004.90. 95	- - - Closed sterile water for inhalation, pharmaceutical grade		
3004.90. 96	- - - Containing o-methoxyphenyl glyceryl ether (Guaifenesin)		
3004.90. 97	- - - Nose-drop medicaments containing naphazoline, xylometazoline or oxymetazoline		
3004.90. 98	--- Sorbitol		
3004.90. 99	--- Other		
3006	Pharmaceutical goods in note 4 to chapter 30...	2009	Products essential to human life, time is required to develop appropriate regulations
3006.10. 00	- Sterile surgical catgut, similar sterile suture materials and sterile tissue adhesives for surgical wound closure; sterile laminaria and sterile laminaria tents; sterile absorbable surgical or dental haemostatics		
3006.20. 00	- Blood-grouping reagents		
3006.30. 10	- - Barium sulfate (for taking orally)		
3006.30. 20	- - Reagents of microbial origin for veterinary biological diagnosis		
3006.30. 30	- - Other microbial diagnostic reagents		
3006.30. 90	- - Other		
3006.40. 10	- - Dental cements and other dental fillings		
3006.40. 20	- - Bone reconstruction cements		
3006.50. 00	- First-aid boxes and kits		
3006.60. 00	- Chemical contraceptive preparations based on hormones, on other products of heading 29.37 or on spermicides		
3006.70. 00	- Gel preparations designed to be used in human or veterinary medicine as a lubricant for parts of the body for surgical operations or physical examinations or as a coupling agent between the body and medical instruments		
3006.80. 00	- Waste pharmaceuticals		
	<i>Cinematographic film</i>		

HS	Description	Schedule	Rationale
3706	Motion-picture film, exposed and developed...	2009	Cultural products, time is required to develop appropriate domestic regulations
3706.10. 10	- - Newsreels, travelogues, technical and scientific films		
3706.10. 20	- - Consisting only of sound track		
3706.10. 91	- - - With picture taken abroad		
3706.10. 99	- - - Other		
3706.90. 10	- - Newsreels, travelogues, technical and scientific films		
3706.90. 20	- - Consisting only of sound track		
3706.90. 90	- - Other		
	<i>Unused postage, printed cards, calendars...</i>		
4907	Unused postage, check forms, banknotes, stock, etc...	2009	Sensitive products for security reasons, time is required to develop appropriate domestic regulations
4907.00. 10	- Banknotes, being legal tender		
4907.00. 20	- Unused postage stamps		
4907.00. 30	- Revenue or similar stamps		
4907.00. 40	- Stock, share or bond certificates and similar documents of title; cheque forms		
4907.00. 90	- Other		
4909	Printed or illustrated post cards, greeting cards, etc....	2009	Cultural products, time is required to develop appropriate domestic regulations
4909.00. 00	Printed or illustrated postcards; printed cards bearing personal greetings, messages or announcements, whether or not illustrated, with or without envelopes or trimmings.		
4910	Calendars, calendar blocks of any kind, printed...	2009	Cultural products, time is required to develop appropriate domestic regulations
4910.00. 00	Calendars of any kind, printed, including calendar blocks.		
4911	Printed matter nesoi, incl print pictures & photos...	2009	Cultural products, time is required to develop appropriate domestic regulations
4911.10. 00	- Trade advertising material, commercial catalogues and the like		
4911.91. 10	- - - Anatomical or botanical instruction charts and diagrams and the like		
4911.91. 20	- - - Other wall pictures and diagrams for instructional purposes; pictures, designs and photographs for incorporation into books, advertising circulars or commercial catalogues		
4911.91. 90	- - - Other		
4911.99. 10	- - - Printed cards for jewellery or for small objects of personal adornment or for articles of personal use normally carried in the pocket, in the handbag or on the person		
4911.99. 20	- - - Printed stickers for explosives		

HS	Description	Schedule	Rationale
4911.99. 90	- - - Other		
	<i>Industrial printers</i>		
8442	Machinery etc nesoi for type-setting, making printing plates etc...	2009	Products sensitive to public order, time is required to develop appropriate domestic regulations
8442.10. 10	- - Electrically operated		
8442.10. 20	- - Not electrically operated		
8442.20. 10	- - Electrically operated		
8442.20. 20	- - Not electrically operated		
8442.30. 11	- - - Impressed flongs and matrices		
8442.30. 12	- - - Machinery for type founding machines		
8442.30. 19	- - - Other		
8442.30. 21	- - - Impressed flongs and matrices		
8442.30. 22	- - - Machinery for type founding machines		
8442.30. 29	- - - Other		
8442.40. 10	- - Of electrically operated machines, apparatus or equipment		
8442.40. 21	- - - Of type-founding or type-setting machinery		
8442.40. 29	- - - Other		
8442.50. 10	- - Printing type of all kinds		
8442.50. 90	- - Other		
8443	Print machinery excluding ink-jet printers (HS 84435100), machinery for used ancillary to printing nesoi...	2009	Products sensitive to public order, time is required to develop appropriate domestic regulations
8443.11. 10	- - - Electrically operated		
8443.11. 20	- - - Not electrically operated		
8443.12. 10	- - - Electrically operated		
8443.12. 20	- - - Not electrically operated		
8443.19. 10	- - - Electrically operated		
8443.19. 20	- - - Not electrically operated		
8443.21. 10	- - - Electrically operated		
8443.21. 20	- - - Not electrically operated		
8443.29. 10	- - - Electrically operated		
8443.29. 20	- - - Not electrically operated		
8443.30. 10	- - Electrically operated		
8443.30. 20	- - Not electrically operated		
8443.40. 10	- - Electrically operated		
8443.40. 20	- - Not electrically operated		
8443.59. 10	- - - Platen presses		
8443.59. 20	- - - Screen printing machinery for the manufacture of PCB/PWBs [ITA/2 (AS2)]		
8443.59. 90	- - - Other		
8443.60. 10	- - Electrically operated		
8443.60. 20	- - Not electrically operated		
8443.90. 10	- - Of screen printing machinery for the manufacture of PCB/PWBs [ITA/2 (AS2)]		
8443.90. 20	- - Other, for electrically operated machines		
8443.90. 90	- - Other		
	<i>Other machinery</i>		
8525	Transmission apparatus for radio-telephony etc; TV camera & other video camera recorders excluding mobile phones (HS 852520) and consumer cameras (HS 85254010)	2009	Products sensitive to national security, time is required to develop appropriate domestic regulations
8525.10. 10	- - For radio-broadcasting		

HS	Description	Schedule	Rationale
8525.10. 21	- - - Video senders		
8525.10. 22	- - - Central monitoring systems		
8525.10. 23	- - - Telemetry monitoring systems		
8525.10. 29	- - - Other		
8525.10. 30	- - Data compression tools		
8525.10. 40	- - Set top boxes which have a communication function [ITA1/B-203]		
8525.10. 50	- - For radio telephony or radio-telegraphy [ITA1/A-048]		
8525.30. 90	- - Other		
8525.40. 20	- - Other still image video cameras		
8525.40. 30	- - Digital cameras		
8525.40. 40	- - Other video camera recorders		
8526	Radar apparatus, radio navigational aid apparatus & radio remote control apparatus	2009	Products sensitive to national security, time is required to develop appropriate domestic regulations
8526.10. 10	- - Radar apparatus, ground base, or of a kind for incorporation in civil aircraft, or of a kind used solely on sea-going vessels [ITA/2]		
8526.10. 90	- - Other		
8526.91. 10	- - - Radio navigational aid apparatus, of a kind for used in civil aircraft, or of a kind used solely on sea-going vessels [ITA/2]		
8526.91. 90	- - - Other		
8526.92. 00	- - Radio remote control apparatus		

Table 6 (b): Schedule of Commitments on Export Trading Rights
(Attached to Annex on Commitments on Trading Rights)

Notes: For the purpose of this table, the schedule starts from January 1st of the specified year

HS	Description	Schedule	Rationale
	Cereals		
1006	Rice	2011	Basic food product essential to food security.
1006.10.10	- - Suitable for sowing		
1006.10.90	- - Other		
1006.20.10	- - Thai Hom Mali rice		
1006.20.90	- - Other		
1006.30.11	- - - Whole		
1006.30.12	- - - Not more than 5% broken		
1006.30.13	- - - More than 5% but not more than 10% broken		
1006.30.14	- - - More than 10% but not more than 25% broken		
1006.30.19	- - - Other		
1006.30.20	- - Parboiled rice		
1006.30.30	- - Glutinous rice (pilot)		
1006.30.40	- - Basmati rice		
1006.30.50	- - Thai Hom Mali rice		
1006.30.61	- - - Whole		
1006.30.62	- - - Not more than 5% broken		
1006.30.63	- - - More than 5% but not more than 10% broken		
1006.30.64	- - - More than 10% but not more than 25% broken		
1006.30.69	- - - Other		
1006.40.00	- Broken rice		

Table 6(c): List of Goods Subject to State Trading Enterprises

HS	Description
2402	Cigars, cheroots, cigarillos and cigarettes...
2402.10.00	- Cigars, cheroots and cigarillos, containing tobacco
2402.20.10	- - Beedies
2402.20.90	- - Other
2402.90.10	- - Cigars, cheroots and cigarillos of tobacco substitutes
2402.90.20	- - Cigarettes of tobacco substitutes
2403	Other manufactured tobacco and manufactured tobacco ...
2403.10.11	- - - Blended tobacco
2403.10.19	- - - Other
2403.10.21	- - - Blended tobacco
2403.10.29	- - - Other
2403.10.90	- - Other
2403.91.00	- - "Homogenised" or "reconstituted" tobacco
2403.99.10	- - - Tobacco extracts and essences
2403.99.30	- - - Manufactured tobacco substitutes
2403.99.40	- - - Snuff
2403.99.50	- - - Smokeless tobacco, including chewing and sucking tobacco
2403.99.60	- - - Ang Hoon
2403.99.90	- - - Other
2709	Crude oil from petroleum and bituminous minerals...
2709.00. 10	- Crude petroleum oil
2709.00. 20	- Condensate
2709.00. 90	- Other
2710	Oil (not crude) from petrol & bitum mineral etc....
2710. 11. 11	- - - Motor spirit, premium leaded
2710. 11. 12	- - - Motor spirit, premium unleaded
2710. 11. 13	- - - Motor spirit, regular leaded
2710. 11. 14	- - - Motor spirit, regular unleaded
2710. 11. 15	- - - Other motor spirit, leaded
2710. 11. 16	- - - Other motor spirit, unleaded
2710. 11. 17	- - - Aviation spirit
2710. 11. 18	- - - Tetrapropylene
2710. 11. 21	- - - White spirit
2710. 11. 22	- - - Low aromatic solvents containing by weight less than 1% aromatic content
2710. 11. 23	- - - Other solvent spirits
2710. 11. 24	- - - Naphtha, reformate or preparations for preparing spirits
2710. 11. 25	- - - Other light oil
2710. 11. 29	- - - Other
2710. 19. 11	- - - - Lamp kerosene
2710. 19. 12	- - - - Other kerosene, including vaporising oil
2710. 19. 13	- - - - Aviation turbine fuel (jet fuel) having a flash point of not less than 23o C
2710. 19. 14	- - - - Aviation turbine fuel (jet fuel) having a flash point of less than 23°C
2710. 19. 15	- - - - Normal paraffin
2710. 19. 19	- - - - Other medium oils and preparations
2710. 19. 21	- - - - Topped crudes
2710. 19. 22	- - - - Carbon black feedstock oil
2710. 19. 23	- - - - Lubricating oil basestock
2710. 19. 24	- - - - Lubricating oils for aircraft engines
2710. 19. 25	- - - - Other lubricating oil
2710. 19. 26	- - - - Lubricating greases
2710. 19. 27	- - - - Hydraulic brake fluid
2710. 19. 28	- - - - Oil for transformer or circuit breakers
2710. 19. 31	- - - - High speed diesel fuel

HS	Description
2710. 19. 32	---- Other diesel fuel
2710. 19. 33	---- Other fuel oils
2710. 19. 39	---- Other
2710. 91. 00	-- Containing polychlorinated biphenyls (PCBs), polychlorinated terphenyls (PCTs) or polybrominated biphenyls (PBBs)
2710. 99. 00	-- Other
4901	Books, brochures & similar printed matter...
4901. 10. 11	--- Wholly or essentially in the official language of the importing country
4901. 10. 19	--- Other
4901. 10. 21	--- Wholly or essentially in the official language of the importing country
4901. 10. 29	--- Other
4901. 91. 10	--- Wholly or essentially in the official language of the importing country
4901. 91. 90	--- Other
4901. 99. 11	---- Wholly or essentially in the official language of the importing country
4901. 99. 19	---- Other
4901. 99. 91	---- Wholly or essentially in the official language of the importing country
4901. 99. 99	---- Other
4902	Newspapers, journals & periodicals...
4902. 10. 00	- Appearing at least four times a week
4902. 90. 11	--- Scientific, technical or economic
4902. 90. 19	--- Other
4902. 90. 21	--- Scientific, technical or economic
4902. 90. 29	--- Other
4902. 90. 91	--- Scientific, technical or economic
4902. 90. 99	--- Other
4903	Children's picture, drawing or coloring books...
8524	Records, tapes and other recorded media for sound or ... excluding 852410, 852431, 852432, 85243910, 85244000, 852491, 85249920
8524. 39. 20	--- For cinematographic film
8524. 39. 90	--- Other
8524. 51. 10	--- Videotape
8524. 51. 20	--- Computer tape
8524. 51. 30	--- For cinematographic film
8524. 51. 90	--- Other
8524. 52. 10	--- Videotape
8524. 52. 20	--- Computer tape
8524. 52. 30	--- For cinematographic film
8524. 52. 90	--- Other
8524. 53. 10	--- Videotape
8524. 53. 20	--- Computer tape
8524. 53. 30	--- For cinematographic film
8524. 53. 90	--- Other
8524. 60. 00	- Cards incorporating a magnetic stripe
8524. 99. 10	--- For video
8524. 99. 30	--- For cinematographic film
8524. 99. 90	--- Other
8802	Other aircraft (for example, helicopters, aeroplanes); spacecraft (including satellites) and suborbital and spacecraft launch vehicles.
8802. 11. 00	-- Of an unladen weight not exceeding 2,000 kg
8802. 12. 00	-- Of an unladen weight exceeding 2,000 kg
8802. 20. 10	-- Aeroplanes
8802. 20. 90	-- Other
8802. 30. 10	-- Aeroplanes
8802. 30. 90	-- Other
8802. 40. 10	-- Aeroplanes
8802. 40. 90	-- Other

HS	Description
8802. 60. 00	- Spacecraft (including satellites) and suborbital and spacecraft launch vehicles
8803	Parts of goods of heading 88.01 or 88.02
8803. 10. 10	- - Of helicopters or aeroplanes
8803. 10. 90	- - Other
8803. 20. 10	- - Of helicopters, aeroplanes, balloons, gliders or kites
8803. 20. 90	- - Other
8803. 30. 00	- Other parts of aeroplanes or helicopters
8803. 90. 10	- - Parts of telecommunication satellites [ITA/2]
8803. 90. 20	- - Of ballons, gliders or kites
8803. 90. 90	- - Other

ANNEX III

Schedules of Toxic Chemicals

Schedule 1

A.	Toxic chemicals:	(CAS Registry number)	HS CODE
(1)	O-Alkyl (<C10, incl. cycloalkyl) alkyl (Me, Et, n-Pr or i-Pr)-phosphonofluoridates e.g. Sarin: O-Isopropyl methylphosphonofluoridate Soman: O-Pinacolyl methylphosphonofluoridate	(107-44-8) (96-64-0)	2931.00 2931.00 2931.00
(2)	O-Alkyl (<C10, incl. cycloalkyl) N,N-dialkyl (Me, Et, n-Pr or i-Pr) phosphoramidocyanidates e.g: Tabun:O-Ethyl N,N-dimethyl phosphoramidocyanidate	(77-81-6)	2931.00 2931.00
(3)	O-Alkyl (H or <C10, incl. cycloalkyl) S-2-dialkyl (Me, Et, n-Pr or i-Pr)-aminoethyl alkyl (Me, Et, n-Pr or i-Pr) phosphonothiolates and corresponding alkylated or protonated salts e.g.VX:O-Ethyl S-2-diisopropylaminoethyl methyl phosphonothiolate	(50782-69-9)	2930.90 2930.90
(4)	Sulfur mustards: 2-Chloroethylchloromethylsulfide Mustard gas: Bis(2-chloroethyl)sulfide Bis(2-chloroethylthio)methane Sesquimustard: 1,2-Bis(2-chloroethylthio)ethane 1,3-Bis(2-chloroethylthio)-n-propane 1,4-Bis(2-chloroethylthio)-n-butane 1,5-Bis(2-chloroethylthio)-n-pentane Bis(2-chloroethylthiomethyl)ether O-Mustard: Bis(2-chloroethylthioethyl)ether	(2625-76-5) (505-60-2) (63869-13-6) (3563-36-8) (63905-10-2) (142868-93-7) (142868-94-8) (63918-90-1) (63918-89-8)	2930.90 2930.90 2930.90 2930.90 2930.90 2930.90 2930.90 2930.90
(5)	Lewisites: Lewisite 1: 2-Chlorovinylchloroarsine Lewisite 2: Bis(2-chlorovinyl)chloroarsine Lewisite 3: Tris(2-chlorovinyl)arsine	(541-25-3) (40334-69-8) (40334-70-1)	2931.00 2931.00 2931.00
(6)	Nitrogen mustards: HN1: Bis(2-chloroethyl)ethylamine HN2: Bis(2-chloroethyl)methylamine HN3: Tris(2-chloroethyl)amine	(538-07-8) (51-75-2) (555-77-1)	2921.19 2921.19 2921.19
(7)	Saxitoxin	(35523-89-8)	3002.90
(8)	Ricin	(9009-86-3)	3002.90
B.	Precursors:		
(9)	Alkyl (Me, Et, n-Pr or i-Pr) phosphonyldifluorides e.g. DF:Methylphosphonyldifluoride	(676-99-3)	2931.00
(10)	O-Alkyl (H or <C10, incl. cycloalkyl) O-2-dialkyl (Me, Et, n-Pr or i-Pr)-aminoethyl alkyl (Me, Et, n-Pr or i-Pr) phosphonites and corresponding alkylated or protonated salts e.g.QL:O-Ethyl O-2-diisopropylaminoethyl methylphosphonite	(57856-11-8)	2931.00 2931.00
(11)	Chlorosarin: O-Isopropyl methylphosphonochloridate	(1445-76-7)	2931.00
(12)	Chlorosoman: O-Pinacolyl methylphosphonochloridate	(7040-57-5)	2931.00

Schedule 2

A.	Toxic chemicals:	(CAS Registry number)	HS CODE
(1)	Amiton: O,O-Diethyl S-[2-(diethylamino)ethyl] phosphorothiolate and corresponding alkylated or protonated salts	(78-53-5)	2930.90
(2)	PFIB: 1,1,3,3,3-Pentafluoro-2-(trifluoromethyl)-1-propene	(382-21-8)	2903.30
(3)	BZ: 3-Quinuclidinyl benzilate (*)	(6581-06-2)	2933.39
B.	Precursors:		
(4)	Chemicals, except for those listed in Schedule 1, containing a phosphorus atom to which is bonded one methyl, ethyl or propyl (normal or iso) group but not further carbon atoms, e.g. Methylphosphonyl dichloride Dimethyl methylphosphonate Exemption: Fonofos: O-Ethyl S-phenyl ethylphosphonothiolothionate	(676-97-1) (756-79-6) (944-22-9)	2931.00 2931.00 2931.00
(5)	N,N-Dialkyl (Me, Et, n-Pr or i-Pr) phosphoramidic dihalides		2929.90
(6)	Dialkyl (Me, Et, n-Pr or i-Pr) N,N-dialkyl (Me, Et, n-Pr or i-Pr)-phosphoramidates		2929.90
(7)	Arsenic trichloride	(7784-34-1)	2812.10
(8)	2,2-Diphenyl-2-hydroxyacetic acid	(76-93-7)	2918.19
(9)	Quinuclidin-3-ol	(1619-34-7)	2933.39
(10)	N,N-Dialkyl (Me, Et, n-Pr or i-Pr) aminoethyl-2-chlorides and corresponding protonated salts		2921.19
(11)	N,N-Dialkyl (Me, Et, n-Pr or i-Pr) aminoethane-2-ols and corresponding protonated salts Exemptions: N,N-Dimethylaminoethanol and corresponding protonated salts N,N-Diethylaminoethanol and corresponding protonated salts	(108-01-0) (100-37-8)	2922.19
(12)	N,N-Dialkyl (Me, Et, n-Pr or i-Pr) aminoethane-2-thiols and corresponding protonated salts		2930.90
(13)	Thiodiglycol: Bis(2-hydroxyethyl)sulfide	(111-48-8)	2930.90
(14)	Pinacolyl alcohol: 3,3-Dimethylbutan-2-ol	(464-07-3)	2905.19

Schedule 3

A.	Toxic chemicals:	(CAS Registry number)	I. HS CODE
(1)	Phosgene: Carbonyl dichloride	(75-44-5)	2812.10
(2)	Cyanogen chloride	(506-77-4)	2851.00
(3)	Hydrogen cyanide	(74-90-8)	2811.19
(4)	Chloropicrin: Trichloronitromethane	(76-06-2)	2904.90
B.	Precursors:		
(5)	Phosphorus oxychloride	(10025-87-3)	2812.10
(6)	Phosphorus trichloride	(7719-12-2)	2812.10
(7)	Phosphorus pentachloride	(10026-13-8)	2812.10
(8)	Trimethyl phosphite	(121-45-9)	2920.90
(9)	Triethyl phosphite	(122-52-1)	2920.90
(10)	Dimethyl phosphite	(868-85-9)	2920.90
(11)	Diethyl phosphite	(762-04-9)	2920.90
(12)	Sulfur monochloride	(10025-67-9)	2812.10
(13)	Sulfur dichloride	(10545-99-0)	2812.10
(14)	Thionyl chloride	(7719-09-7)	2812.10
(15)	Ethyl-diethanolamine	(139-87-7)	2922.19
(16)	Methyl-diethanolamine	(105-59-9)	2922.19
(17)	Triethanolamine	(102-71-6)	2922.13

ANNEX IV

List of Countries and Territories Subject to CVA Application

No.	Name of Country
1	Argentina
2	Australia
3	Austria
4	Bangladesh
5	Belarus
6	Belgium
7	Brazil
8	Brunei
9	Cambodia
10	China
11	Colombia
12	Cyprus
13	Czech Republic
14	Denmark
15	Estonia
16	Finland
17	France
18	Germany
19	Greece
20	Holland
21	Hong Kong
22	Hungary
23	India
24	Indonesia
25	Ireland
26	Israel
27	Italy
28	Japan
29	Laos
30	Lat via
31	Litva
32	Luxumburg
33	Malaysia
34	Malta
35	Mexico
36	Mongolia
37	Myanmar
38	New Zealand
39	Norway
40	Pakistan
41	Peru
42	Poland
43	Portugal
44	Singapore
45	Slovakia
46	Slovenia
47	South Africa
48	South Korea
49	Spain
50	Sweden
51	Taiwan

No.	Name of Country
52	Thailand
53	The Philippines
54	Turkey
55	UK
56	Ukraine
57	Uruguay
58	US

ANNEX V

Industrial Zones as of End of July 2005

No.	Name of industrial zones and export processing zones	Location (province/city)	Date of granting license	Infrastructure investors
I	Industrial zones which have been established and are in operation			
1	AMATA (Phases 1&2)	Dong Nai	1994	Thailand – Viet Nam
2	Nhon Trach I	Dong Nai	1995	Viet Nam
3	Nhon Trach II	Dong Nai	1997	Viet Nam
4	Nhon Trach III (Phase 1)	Dong Nai	1997	Viet Nam
5	Go Dau	Dong Nai	1995	Viet Nam
6	LOTECO	Dong Nai	1996	Japan – Viet Nam
7	Bien Hoa II	Dong Nai	1995	Viet Nam
8	Bien Hoa I	Dong Nai	2000	Viet Nam
9	Song May	Dong Nai	1998	Viet Nam
10	Ho Nai	Dong Nai	1998	Viet Nam
11	Tam Phuoc	Dong Nai	2003	Viet Nam
12	My Xuan A	Ba Ria – Vung Tau	1996 2002	Viet Nam
13	My Xuan A2	Ba Ria – Vung Tau	2001	Taiwan – Viet Nam
14	Dong Xuyen	Ba Ria – Vung Tau	1996	Viet Nam
15	My Xuan B1	Ba Ria – Vung Tau	1998	Viet Nam
16	Phu My I	Ba Ria – Vung Tau	1998	Viet Nam
17	Cai Mep	Ba Ria – Vung Tau	2002	Viet Nam
18	Viet-Sing*	Binh Duong	1996 2004	Singapore – Viet Nam
19	Binh Duong	Binh Duong	1997	Viet Nam
20	Song Than I	Binh Duong	1995	Viet Nam
21	Song Than II	Binh Duong	1996	Viet Nam
22	Dong An	Binh Duong	1996	Viet Nam
23	Tan Dong Hiep A	Binh Duong	2001	Viet Nam
24	Tan Dong Hiep B	Binh Duong	2002	Viet Nam
25	Viet Huong	Binh Duong	1996	Viet Nam
26	My Phuoc	Binh Duong	2002	Viet Nam
27	Tan Thuan	Ho Chi Minh City	2001	Taiwan – Viet Nam
28	Linh Trung 1	Ho Chi Minh City	1992	China – Viet Nam
29	Linh Trung 2**	Ho Chi Minh City	1997	China – Viet Nam
30	Binh Chieu	Ho Chi Minh City	1996	Viet Nam
31	Tan Tao*	Ho Chi Minh City	1996	Viet Nam
32	Vinh Loc	Ho Chi Minh City	1997	Viet Nam
33	Hiep Phuoc	Ho Chi Minh City	1996	Viet Nam
34	Tan Binh	Ho Chi Minh City	1997	Viet Nam
35	Tan Thoi Hiep	Ho Chi Minh City	1997	Viet Nam
36	Le Minh Xuan	Ho Chi Minh City	1997	Viet Nam
37	Tay Bac Cu Chi	Ho Chi Minh City	1997	Viet Nam
38	Cat Lai	Ho Chi Minh City	2003	Viet Nam
39	Trang Bang	Tay Ninh	1999 2003	Viet Nam
40	Da Nang	Da Nang	1994	Malaysia – Viet Nam
41	Lien Chieu	Da Nang	1998	Viet Nam
42	Hoa Khanh (Phase 1 and extension)*	Da Nang	1997 2004	Viet Nam
43	Dien Nam- Dien Ngoc (Phase 1 and extension)	Quang Nam	1996 2005	Viet Nam

No.	Name of industrial zones and export processing zones	Location (province/city)	Date of granting license	Infrastructure investors
44	Tinh Phong	Quang Ngai	1997	Viet Nam
45	Quang Phu	Quang Ngai	1998	Viet Nam
46	Phu Bai (PHASE1+2)	Thua Thien - Hue	1998 2004	Viet Nam
47	Suoi Dau	Khanh Hoa	1997	Viet Nam
48	Phan Thiet (Phases 1&2)	Binh Thuan	1998	Viet Nam
49	Hoa Hiep	Phu Yen	1998	Viet Nam
50	Phu Tai (Phases 1,2,3 and Extention)	Binh Dinh	1998 2003	Viet Nam
51	Le Mon	Thanh Hoa	1998	Viet Nam
52	Bac Vinh	Nghe An	1998	Viet Nam
53	Noi Bai	Ha Noi	1994	Malaysia – Viet Nam
54	Sai Dong B	Ha Noi	1996	Viet Nam
55	Bac Thang Long (Phase 1 and extension)	Ha Noi	1997 2002	Japan-Viet Nam
56	Nomura-HP	Hai Phong	1994	Japan-Viet Nam
57	Cai Lan	Quang Ninh	1997	Viet Nam
58	Tien son	Bac Ninh	1998 2004	Viet Nam
59	Que Vo	Bac Ninh	2002	Viet Nam
60	Duc Hoa 1 (Phase 1)	Long An	1997	Taiwan-Viet Nam
61	Thuan Dao - Ben Luc	Long An	2003	Taiwan-Viet Nam
62	My Tho	Tien Giang	1997	Viet Nam
63	Tra Noc 1	Can Tho	1995	Viet Nam
64	Sa Dec	Dong Thap	1998	Viet Nam
65	Song Cong 1	Thai Nguyen	1999	Viet Nam
66	Thuy Van (Phases 1, 2 and 3)	Phu Tho	1997 2003 2004	Viet Nam
67	Tam Thang	Dac Nong	2002	Viet Nam
68	Dong Van	Ha Nam	2003	Viet Nam
69	Quang Minh	Vinh Phuc	2004	Viet Nam
70	Nam Sach	Hai Duong	2003	Viet Nam
71	Dinh Tram (Phases 1 and 2)	Bac Giang	2003 2005	Viet Nam
II	Industrial zones which have been established and are in the process of basic construction			
1	Nhon Trach Textile and Clothing	Dong Nai	2003	Viet Nam
2	An Phuoc	Dong Nai	2003	Viet Nam
3	Long Thanh	Dong Nai	2003	Viet Nam
4	Nhon Trach V	Dong Nai	2003	Viet Nam
5	Dinh Quan	Dong Nai	2004	Viet Nam
6	Nhon Trach 6	Dong Nai	2005	Viet Nam
7	Cat Lai IV	Ho Chi Minh City	1997	Viet Nam
8	Phong Phu	Ho Chi Minh City	2002	Viet Nam
9	Linh Trung III Industrial and Export processing zone	Tay Ninh	2002	China - Viet Nam
10	Tron Thanh	Binh Phuoc	2003	Viet Nam
11	Hoa Cam	Da Nang	2003	Viet Nam
12	Nam Cam (Phase 1)	Nghe An	2003	Viet Nam
13	Vung Ang I	Ha Tinh	2002	Viet Nam
14	Dai T- Ha Noi	Ha Noi	1995	Dai Loan
15	Deawoo Hanel (SDR)	Ha Noi	1996	Korean - Viet Nam

No.	Name of industrial zones and export processing zones	Location (province/city)	Date of granting license	Infrastructure investors
16	Nam Thang Long (Phase 1)	Ha Noi	2001	Viet Nam
17	Dinh Vu (Phase 1)	Hai Phong	1997	The US, Belgium and Thailand
18	Hai Phong 96 Export processing zone	Hai Phong	1997	HongKong -Viet Nam
19	Dai An	Hai Duong	2003	Viet Nam
20	Phuc Dien	Hai Duong	2003	Viet Nam
21	Tan Truong	Hai Duong	2005	Viet Nam
22	Pho Noi B (Phase 1 and 2)	Hung Yen	2003	Viet Nam
23	Pho Noi A	Hung Yen	2004	Viet Nam
24	Bac Phu Cat	Ha Tay	2002	Viet Nam
25	Kim Hoa	Vinh Phuc	1998	Viet Nam
26	Phuc Khanh	Thai Binh	2002	Taiwan
27	Xuyen A ***	Long An	1997	Viet Nam
28	Tan Kim	Long An	2003	Viet Nam
29	Hoa Xa	Nam Dinh	2003	Viet Nam
30	Hoa Phu	Vinh Long	2004	Viet Nam
31	Ninh Phuc (Phase 1 and Extention phase 1)	Ninh Binh	2003	Viet Nam
32	Viet Huong II	Binh Duong	2004	Viet Nam
33	Binh An Textile and Apperal	Binh Duong	2004	Viet Nam
34	Mai Trung	Binh Duong	2004	Viet Nam
35	My Phuoc II	Binh Duong	2005	Viet Nam
36	Tra Noc	Can Tho	1998	Viet Nam
37	Hung Phu I (Phases 1 and 2)	Can Tho	2004	Viet Nam
38	Tan Duc (Phase 1)	Long An	2004	Viet Nam
39	Long My (Phase 1)	Binh Dinh	2004	Viet Nam
40	Loc Son	Lam Dong	2003	Viet Nam
41	Tan Huong (Phase 1)	Tien Giang	2004	Viet Nam
42	Tan Phu Trung	Ho Chi Minh City	2004	Viet Nam
43	Tra Da	Gia Lai	2003	Viet Nam
44	Nam Dong Ha	Quang Tri	2004	Viet Nam
45	Khanh An (Phase 1)	Ca Mau	2004	Viet Nam
46	An Nghiep	Soc Trang	2005	Viet Nam
47	Phu My II	Ba Ria – Vung Tau	2004	Viet Nam
48	Hon La (Phase 1)	Quang Binh	2005	Viet Nam
49	Tay Bac Dong Hoi	Quang Binh	2005	Viet Nam
50	Giao Long	Ben Tre	2005	Viet Nam
51	Sao Mai (Phase 1)	Kon Tum	2005	Viet Nam
52	Ninh Thuy	Khanh Hoa	2004	Viet Nam
53	Vinh Loc 2	Long An	2005	Viet Nam
124	Total			