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Additional Question and Replies

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II. ECONOMIC POLICIES

- Monetary and Fiscal Policy

Question 1

According to recent World Bank documentation, there is evidence that the number of non-performing loans (NPLs) by state-owned commercial banks is increasing. We appreciate the table in the response to Question 1 in WTO/ACC/VNM/39.

- Please indicate the value of non-performing loans owed by SOEs to SOCBs.
- What policy measures are being taken to slow the growth of SOE NPLs?

Answer:

Concerning lending activities of credit institutions in general and SOCBs in particular, the Central Bank issued Decision No. 1627 dated 31 December 2001 on Lending Regulations of credit organizations to clients. According to this Decision, credit organizations, including SOCBs, are also required to establish their own procedures for lending approval based on objective criteria such as feasibility assessment, investment project efficiency assessment, trading and production plans and client's credit-worthiness.

The existing credit policies assure that SOCBs in particular and credit organizations in general are self-responsible for their credit activities. The State Bank does not interfere in lending activities of credit organizations in general and SOCBs in particular. The statistics on the value of non-performing loans owed by SOEs to SOCBs are as follows:

	NPL as of December 2004
a) The total non-performing loans of SOEs to 4 SOCBs (billion VND)	4,646
b) The ratio of SOEs' non-performing loans in total debts of 4 SOCBs	3.67 per cent

Question 2

We appreciate the description of 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 in the response to Question 1 in WTO/ACC/VNM/39. While this helps us understand how Viet Nam intends to address its NPL problems, it does not advise what steps Viet Nam intends to take to reduce the number of loans provided to applicants with poor credit risk. Does Viet Nam have a plan to promote loan applications and placement by SOCBs on commercial terms, even to SOEs? If so, what near term steps are being taken to minimize lending to poor risk SOEs?

Answer:

In order to enhance the efficiency of SOCBs activities, since 2001, SOCBs have started financial, organizational and operational reorganization as follows:

- SOCBs have strengthened the process to deal with non-performing loans together with improving assets quality and enhancing disciplines, skills of risk management. Therefore, non-performing loans in SOCBs, including those from SOEs, have been decreasing and credit quality has been improved;

- Policy lending has been separated from commercial credit activities of SOCBs, and has been endowed to social policies banks;
- Each SOCBs has established its own credit handbook which has been applicable since late 2004 and early 2005. Concurrently, credit risk management system has been gradually completed in line with international standards and customary practice; individual business strategy of each bank has been set out to 2005 and 2010. Therefore, new credits are of higher quality; and
- According to the Law of Credit Organizations, credit organizations and SOCBs are required to establish Supervision Board to keep track of financial activities, supervise the implementation of accounting regime, the safety of credit organizations' operation, implement internal auditing periodically in order to accurately assess their operation and financial status. Credit organizations have to establish internal inspection system to examine and control the legal and internal regulations observations, examine and control practical exercises.

Question 3

Will the Central Bank continue to remain the manager and supervisor of state banks? If so, for how long?

Answer:

According to Vietnamese law, the State Bank is in charge of state management, inspection, and supervision over credit organizations, including SOCBs. The chairmen of the BOM and the Directors General of SOCBs are appointed by the Prime Minister.

Out of the 5 SOCBs, the Prime Minister has made a Decision to equitize 2 SOCBs in 2006. The objective of SOCBs equitization is to improve operational efficiency, ownership diversification. At the same time, the State Bank is planning the equitization process for most of SOCBs by 2010. In this process, the ownership role of the State Bank to SOCBs will be transferred to other management agencies.

The State Bank of Viet Nam continues to be in charge of state management, inspection, and supervision over SOCBs and credit organizations.

Question 4

Paragraph 10: What are the lending terms that SOCBs provide to SOEs?

Answer:

As indicated in paragraph 10, financial institutions themselves consider and decide whether to provide loans to state-owned enterprises, on commercial terms.

Question 5

Paragraph 13: What are the criteria used for applying the variable tax rates mandated by the Ordinance on Natural Resources Tax?

Answer:

Circular No. 153/1998/TT-BTC of Ministry of Finance dated 26 November 1998 provides the detailed guidelines for the implementation of Decree No. 68/1998/CP of the Government dated

3 September 1998 (which, in turn, provides detailed provisions for the implementation of the amended Ordinance on Natural Resources Tax) Point 3, Section II of the Circular stipulates that:

"Based on the value of each natural resource, the exploration conditions and the management requirements for each natural resource in a particular period of time, the line Ministries or agencies gather relevant information and statistics of natural resource in question, then report to the Ministry of Finance to consider the adjustment of natural resources tax rate in line with tax frame which is stipulated in Article 6 of the Ordinance on Natural Resources Tax. The adjustment will be made if necessary to a particular type of resource, not to an individual circumstance."

The detailed criteria used are:

1. Category of natural resources: Natural resources under different categories are subject to different tax rates. The Ordinance on Natural Resources classify natural resources into 8 categories: ferrous; non-ferrous; oil; gas; natural forestry products; natural fishery products; natural water; others;
2. Scarcity of natural resources: Scarce natural resources are subject to higher tax rates than ordinary natural resources, e.g. ordinary fishery products are subject to 1 per cent or 2 per cent tax rates while pearl/holothurians/abalone are subject to from 6 per cent to 10 per cent;
3. Recyclable and ir-recyclable natural resources: recyclable natural resources are subject to higher tax rates than irrecyclable natural resources;
4. Economic value of natural resources: natural resources of higher economic value are subject to higher tax rates;
5. Exploitation condition of natural resources: natural resources in disadvantageous areas (less favourable conditions for exploitation) are subject to lower tax rates than those in more favourable conditions; and
6. Purpose of the use of natural resources: In some cases, the same natural resources used for different purposes are subject to different tax rates. E.g. natural water subject to 0-5 per cent tax rates but natural water used for electricity hydro plant subject to only 0-2 per cent .

- **Foreign Exchange and Payments**

Question 6

Paragraphs 19-20: Please update the Working Party on the status of the two pending pieces of legislation designed to remove controls from the acquisition and retention of foreign exchange:

- **Draft Decree on the Amendments of and Supplements to the Government Decree No. 63/1998/ND-CP dated 19 August 1998 on Foreign Exchange Control; slated for submission to the National Assembly this month, to remove "the obligation for legal residents to sell their current revenues in foreign currencies to commercial banks, and providing that foreign exchange controls would only be applied in exceptional cases to maintain the national financial and monetary security in accordance with the IMF Articles Agreement and IMF Document No. 144 (52/51) of 14 August 1952." We renew our request for a copy of this Decree.**
- **Draft Ordinance on Foreign Exchange, slated for issuance in July 2005, is supposed to "repeal all remaining foreign exchange restrictions on payments and transfers for current account transactions and also provide a concept of international current account transactions in compliance with the IMF's definition."**

Has the Ordinance on Foreign Exchange been submitted to the National Assembly? If not, when will Viet Nam submit it?

Answer:

The Government has issued Decree No. 131/2005/ND-CP dated 18 October 2005 on amendment and supplement of some Articles of Decree No. 63/1998/ND-CP dated 17 August 1998 of the Government on Foreign Exchange Management. According to the Decree:

- Current transactions are liberalized according to the principle: "Within the territory of Viet Nam, payments and money transfer of current transactions are freely conducted";
- Payments and money transfer of international current transactions under the Decree consist of:
 - (i) Payments relates to goods and services import – export, other current transactions, short-term credit;
 - (ii) Payments for net income from direct and indirect investment, depreciation of direct investments (if applicable);
 - (iii) Interest and loan payments for foreign loans; and
 - (iv) One-way money transfer for consumption purpose or other similar transactions.
- Non-resident and resident are eligible to buy, transfer, or bring foreign currencies out of the country to meet the demand of legitimate current payments without the presence of related documents to prove the fulfilment of tax obligations to the Government of Viet Nam.

The Draft of the Ordinance on Foreign Exchange Management has been submitted by the Government to the Standing Committee of the National Assembly.

Question 7

Paragraph 17 states in the fourth sentence "that income in Vietnamese Dong could be converted into foreign currency at authorized banks upon presentation of relevant documents and a certificate that all financial obligations in accordance with the laws had been fulfilled" and again in the next sentence "a certificate from the competent tax authorities testifying that all financial obligations to the State of Viet Nam had been fulfilled."

- **This would seem to suggest that a requirement still exists that all tax obligations must be met before payments and transfers for current international payments may be made. Is that the case? Will the ordinance eliminate this restriction and the other current account restriction we understand still exists - the exclusion of payments for loan amortizations and depreciation payments?**
- **With respect to the response to Question 16 in WT/ACC/VNM/39, does Viet Nam intend to freely float the Dong? If so, when?**
- **We disagree with Viet Nam's response to Question 18 in WT/ACC/VNM/39. The discussion of the fee on foreign currency imports should be moved to this section. The fee, in our opinion, is a restriction on current account transactions and should be eliminated.**

We support the draft commitment in paragraph 28 and request that Viet Nam remove the brackets.

Answer:

- The Government's Decree No. 131/2005/ND-CP dated 18 October 2005 on amendment and supplement of some Articles of Decree No. 63/1998/ND-CP dated 17 August 1998 of the Government on Foreign Exchange Management has eliminated the requirement that tax-fulfilment documents be presented as well as other restrictions on current account transactions.
- Viet Nam has been applying floating exchange rate with management since early 1999. The State Bank of Viet Nam has made announcement on average transactional exchange rate in the inter-bank market. Commercial banks can decide at their own discretion the exchange rate within transactional exchange rate announced by the State Bank plus/minus a certain transactional margin. The applicable margin now is +0.25 per cent.
- The State Bank would only interfere in foreign exchange inter-bank market in appropriate time to contribute to the stabilization of exchange rate and create favourable conditions for international payment activities.
- We would like to clarify that there is no fee on the movement of foreign currency. The issue under discussion is the custom fee applicable to notes and coins (a special kind of goods). In addition, the issue has been addressed by Viet Nam's confirmation not to apply the fee.
- We agree with the removal of the brackets.

Question 8

Referring to the response to Question 19 in WT/ACC/VNM/39, we would like to make the following points:

- **The "related declarations and decisions of the WTO" include the "Declaration on the Relationship of the WTO and the IMF" and the "WTO Agreements with the IMF and the World Bank."**
- **Both are binding on WTO members since WTO members adopted both of the above declarations. (Both Agreements can be found on the WTO and IMF websites)**
- **"Contractual terms" implies that if a contract for the buying or selling of goods or the facilitation of an investment is in force or has been negotiated allowing the government of either party to restrict current account remittances, such terms would not be enforceable under the proposed commitment.**

Answer:

We agree with the commitment language as proposed and will adjust accordingly.

- **Investment Regime**

Question 9

We have been informed that Viet Nam recently ratified an amended Commercial Law (2005 Commercial Law), which was enacted by the National Assembly on 14 June 2005 and will become effective on 1 January 2006.

On August 2005, the Ministry of Trade released a draft decree (the Implementing Decree) providing detailed guidelines for the implementation of the 2005 Commercial Law with respect to commercial activities of foreign invested enterprises (FIEs) in Viet Nam. Under the Implementing Decree, foreign business entities shall be entitled to set up commercial foreign invested enterprises to conduct commercial activities in Viet Nam (including importation and distribution of goods), subject to various restrictions on goods and the timetable for Viet Nam's

commitments under international treaties. In this regard, Viet Nam provided information in Annex 2 of the revised Draft report, namely Table 7. Also a list indicating transition periods for distribution rights had been provided in Viet Nam's latest services offer dated April 2004.

The draft Implementing Decree also provides for existing, licensed FIEs to engage in the distribution of goods subject to an amendment of their existing investment licence. It is suggested that only existing FIEs with investors from countries with which Viet Nam has reciprocal Most-Favoured Nation (MFN) status would be permitted to import products for sale into the Vietnamese market. It is not clear, whether this is meant to apply to countries, with which Viet Nam has concluded bilateral Agreements or whether this is meant to be with all WTO members. But in any case, it appears to us that there may be some problem with GATT Article III (National Treatment Clause), which unmistakably requires that laws and regulations affecting among others the internal sale, ..., distribution or use of products, should not be applied to imported or domestic products as to afford protection to domestic production.

The Implementing Decree also proposes conditions for existing Foreign Invested Enterprises to import products such as minimum capital investment. Yet, paragraph 29 of the Draft Report states that minimum legal capital requirements for the establishment of enterprises stipulated in the Law on Companies had been abolished, except for some financial services sectors.

We therefore request Viet Nam to provide clarification on these points and make where necessary adaptations to the draft implementation decree. Furthermore, the report should stipulate clearly that Viet Nam is committed upon accession not to apply any limitation on granting investment licenses for both local manufacturing, importing and marketing of any product, except those for which limitations have been indicated either in the schedule of specific commitments on trade in services or in the lists concerning trading rights or import limitations or prohibitions (among others Table 7 of the Draft Report).

Answer:

The comment refers to an old draft that was made public to solicit comments from the public.

The latest version is the 5th draft Decree providing detailed guidelines for the implementation of the amended Commercial Law with respect to commercial activities of foreign invested enterprises in which there have been many changes compared with the previous versions. We would like to clarify as follows:

- Firstly, the draft Decree doesn't mean the only existing FIEs of investors from countries with which Viet Nam has reciprocal MFN status would be permitted to import products for sale into Vietnamese market. Paragraph 3 of Article 2 of the latest draft Decree stipulates that "... for the businesses from the countries or territories with which Viet Nam does not have international commitments on market access with respect to commercial activities, the Minister of Trade shall decide whether or not to permit the establishment of FIEs according to the instructions of the Prime Minister"; and
- Secondly, Article 5 of the draft Decree has abolished the minimum capital investment.

As such, the issues raised by the Member have already been effectively resolved in this revised version.

Question 10

We welcome the table provided by Viet Nam under the reply to Question 4 of WT/ACC/VNM/38 and as Table 1 of Annex 2 in the revised draft Working Party report (WT/ACC/SPEC/VNM/5/Rev.1). We note that:

- Viet Nam refers to the prohibited business sectors as "trading in" (e.g. "trading in weapons...") and would appreciate advice as to whether this implies limitations on the rights of individuals or legal persons to be an importer of record (i.e. trading right to import) as well as the right to distribute these items within Viet Nam. Could Viet Nam also indicate if these constitute additional trading rights limitations that need to be reflected in Table 7 to the revised Working Party report?

Many of these activities could be effectively regulated (i.e. to prevent problems for security, health etc) with the use of appropriate licensing or standards, rather than via the maintenance of state-owned enterprises in these sectors. We ask if Viet Nam is giving further consideration within its draft legislation to provide for private activity and investment in these sectors.

Answer:

A more appropriate translation of the Vietnamese term would be "conducting business in" rather than "trading in..." as the Vietnamese term covers both domestic and international trading and other commercial activities. It is therefore not directly related to limitations on being importer of record. The list of prohibited business sectors in Table 1, Annex 2 of Draft Report is applicable to all domestic enterprises, regardless their ownership, and FDI enterprises in Viet Nam for the legitimate national security, human health and plant protection and other reasons in line with Article XX and XXI of the GATT.

Question 11

We look forward to further information on the draft Investment Law and draft Enterprise Law, and its incorporation into the Working Party report.

Answer:

Viet Nam has provided the drafts of these laws to the Working Party. We would welcome specific questions and comments on these draft laws.

Question 12

We appreciate the response to Question 5 of WT/ACC/VNM/38, but note that "reactionary cultural products" is not as much a sector of the Vietnamese economy, but an activity that could potentially be undertaken by individuals or businesses in any area of the economy involved in the publication of material. In that case, does Viet Nam allow for private investment in sectors such as publishing, media, information technology etc, provided there is no case of trading in "reactionary cultural products"?

Answer:

Domestic private sector may participate in many activities in publication, broadcasting, information technology, etc. in line with the applicable laws. Foreign investors may participate in these sectors/activities in line with Viet Nam's commitments upon the WTO accession.

Question 13

We welcome Viet Nam's commitment (reply to Question 6 of WT/ACC/VNM/38) to provide the Working Party with a comprehensive list of business licenses as soon as a review is completed. In providing that list and incorporating key elements in the revised Working Party report, we request that Viet Nam clarify the different categories of business licenses, and the provisions that apply to them. In particular, we would appreciate advice on what makes a "conditional business sector" conditional, even though Viet Nam notes that such sectors do not all require business licenses. Again we ask that the table include columns for (1) the sector/activity, (2) the conditions of the licence, and (3) the government body or bodies involved in the issuance and the approval of licenses.

Answer:

As directed by the Government, relevant Ministries is required to (i) review, consolidate and publish a list of conditional business lines stipulated by the legal documents within the domains under their management; (ii) publish the list of effective licenses provided for in the legal documents in their domain of management, publish provisions on procedures, conditions, issuing authorities, time-limit for issuance of each licence.

It is a regular and continuing task of all concerned ministries/agencies. Therefore, Viet Nam cannot inform when this process will be completed. Currently, these tasks have been carried out, and the results are available on the websites of the Viet Nam's Chamber of Commerce and Industries (<http://www.vcci.com.vn>) and a number of other government agencies. An illustrative list of business licenses is provided in Annex I of this document.

The conditional business activities that are not subject to licenses are those set out in the relevant laws. These conditions include the conditions enterprises must satisfy such as regulations on sanitary, environmental standards, food standards, fire regulations, public order, traffic security and other conditions required for the corresponding business activities.

Question 14

We welcome Viet Nam's advice in its response to Question 9 of WT/ACC/VNM/38 that foreign investment requirements and regulations discriminating between foreign and domestic investment are being addressed in the draft Investment Law and the draft Enterprise Law. We request that Viet Nam incorporate advice on these laws in the Working Party report once finalized.

Answer:

We take note of this request.

Question 15

We thank Viet Nam for the reply provided to Question 13 of WT/ACC/VNM/38.

- **We look forward to seeing an English translation of the Law on amendments of and supplements to some articles of the Mineral Law, if possible in draft form prior to enactment in the coming months.**

We welcome the reference in the Working Party report to the fact that there are no grounds for refusal of an investment licence at the exploration stage. We would also welcome further clarification of what grounds do exist for refusal of an investment licence.

Answer:

We attach herewith an English translation of the Law on amendments of and supplements to some Articles of the approved by the National Assembly of the Socialist Republic of Viet Nam on 14 June 2005.

The Mineral Law passed in 1996, and the Law on amendments of and supplements to some articles of the Mineral Law passed on 14 June 2005, available through document WT/ACC/VNM/41/Add.1 do not provide any provisions on the refusal of an investment licence at the exploration stage. Investment projects in mining are considered on case-by-case basis.

Question 16

We thank Viet Nam for its response to Question 14 of WT/ACC/VNM/38 that it maintains no further mandatory export ratio requirements other than those it has already committed to eliminate upon accession. We would welcome full details in the Working Party report on the range of export ratio requirements eliminated and a commitment in the report that this will be done upon accession.

Answer:

Viet Nam has provided all the information relating to export ratio requirements and has also committed to eliminate export ratio requirements from the date of accession.

Question 17

Referring to paragraph 29 and Question 6 of WT/ACC/VNM/38, we note the Vietnamese statement that it is currently revising its business licensing system, and that it will submit a comprehensive list of sectors where non-automatic business licenses are needed as soon as this review has been completed.

We would be happy if Viet Nam could indicate when it expects the review process to be finalised and the documents submitted to the Working Party ?

Answer:

As directed by the Government, relevant Ministries is required to (i) review, consolidate and publish a list of conditional business lines stipulated by the legal documents within the domains under their management; (ii) publish the list of effective licenses provided for in the legal documents in their domain of management, publish provisions on procedures, conditions, issuing authorities, time-limit for issuance of each licence.

It is a regular and continuing task of all concerned ministries/agencies. Therefore, Viet Nam cannot inform when this process will be completed. Currently, these tasks have been carried out, and the results are available on the websites of the Viet Nam's Chamber of Commerce and Industries (<http://www.vcci.com.vn>) and a number of other government agencies. An illustrative list of business licenses is provided in Annex 1 of this document.

The conditional business activities that are not subject to licenses are those set out in the relevant laws. These conditions include the conditions enterprises must satisfy such as regulations on sanitary, environmental standards, food standards, fire regulations, public order, traffic security and other conditions required for the corresponding business activities.

Question 18

Article 23 of the draft Investment Law stipulates that the ratio of purchased shares, capital contribution of domestic and foreign investors as regards each sector, shall be set out in accordance with regulations of the Government.

When will these regulations be available?

Answer:

If adopted by the National Assembly at this year-end session, the Investment Law would take effect as from 1 July 2006. The implementing decrees of this Law, including the regulations on percentage of shares of existing Vietnamese enterprises which foreign investors are allowed to purchase, would take effect concurrently with the Investment Law.

Question 19

Article 27: Conditional investment sectors: We would urge Viet Nam to set up an exclusive list of conditional investment sectors and to incorporate it into the investment law. Also the procedures of granting an investment licence in these sectors should be clearly set out in the law.

Could Viet Nam confirm what will be the maximum foreign shareholding in the conditional sectors? According to Article 27 it appears to be 49 per cent?

Answer:

The Draft Investment Law cannot set out specifically exclusive list of conditional investment sectors since this draft Law will be applied in a stable and long-term manner while the above-mentioned list may be adjusted from time to time. To that end, in line with the above principle, the Government will issue a Decree (taking effect concurrently with the Investment Law) to provide in detail for this list and specific conditions for each sector.

Procedures for granting Investment Registration Certificate to the projects that fall into the list of conditional investment sectors is provided for very clearly in Article 48 of the 16th draft of the Investment Law.

The provisions of Article 27 of the 13th draft of the Investment Law (i.e. Article 29 of the 16th draft Investment Law) are not designed to determine the capped equity capital (49 per cent) of foreign investors investing in conditional investment sectors. The maximum foreign shareholding is subject to Viet Nam's commitments in services.

Question 20

We note that Article 30.3 stipulates that "where it is necessary to encourage the development of an extremely important industry or of a special region or economic area, the Government may provide for other investment incentives different from those set out in this Law..."

We would urge Viet Nam to ensure that all investment incentives in Viet Nam are transparent and based on law. Ad hoc measures in the meaning of Article 30.3 are highly questionable and we urge Viet Nam to change its legislation to remove from it the possibility of resorting to ad hoc measures.

Answer:

Article 30.3 (Article 39 of the 16th draft Investment Law) is aimed to encourage investment in certain sectors in line with development plans of the Government from time to time. Viet Nam undertakes to implement these measures in accordance with the principles set out in the Investment Law as well as the WTO's applicable rules.

Question 21

It is noted that the investment law stipulates in Article 26 that Viet Nam shall encourage investments in the sector of export production, and in Article 29 that Viet Nam encourages investors to make investments in geographical areas of export-processing zones. Because of this classification, all incentives listed under Section III "Investment Incentives" of Chapter V of the law are also granted for export activities, and considered as prohibited export subsidies under Article 3 of the WTO Agreement of Subsidies and Countervailing Measures. This includes Article 46 concerning investment to infrastructure of industrial zones, export processing zones, high tech zones etc. It is also noted that infrastructure construction of industrial zones, export processing zones etc, is classified as "Important project" in Article 50.

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

Answer:

The 16th draft Investment Law has removed all of the prohibited subsidies in the meaning of Article 3 of the SCM Agreement. In our view, the measures to support infrastructure construction of industrial zones, export processing zones and high-tech zones are not prohibited under the SCM Agreement.

The notification of industrial subsidies is being updated for the 2003-2004 period, taking into account of the recent changes with respect to the investment incentives of Viet Nam, and will be submitted to the Working Party. The new notification will include all the available information on each subsidy program applied by Viet Nam.

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

- (i) Subsidies contingent upon localization ratios and the use of domestic over imported goods shall be eliminated upon accession to the WTO;
- (ii) Subsidies in the form of direct payment from the State budget contingent upon export performance shall be eliminated upon of accession to the WTO; and
- (iii) Concerning the remaining prohibited subsidies (mainly subsidies in the form of investment incentives), Viet Nam has revised its draft Law on Investment to eliminate the practice of granting these subsidies from the date when the new rules become effective (i.e. 1 July 2006 if so approved by the National Assembly). Additionally, Viet Nam shall eliminate the prohibited subsidies in the form of investment incentives for the licensed projects no later than 7 years from the date of Viet Nam's accession to the WTO in order to observe its

commitments with the existing investors and stabilize the business environment. The detailed information on the subsidies programs and the schedule for elimination of the prohibited subsidies shall be elaborated in the updated notification on industrial subsidies.

Question 22

In Draft Enterprise Law:

- **Article 6.2 refers to the list of prohibited business sectors to be declared by the government. When would this list be available? We would urge Viet Nam to integrate it into the Enterprise law for sake of clarity and legal certainty.**
- **Article 6.5 states that foreigners are prohibited or limited from conducting some businesses in accordance with the law on investment.**

We note that this provision is not in line with the law on investment, which foresees as the only limitation for foreigners maximum 49 per cent investment in the conditional business sectors. The investment law does not foresee any sectors prohibited for foreigners only. We would urge Viet Nam to ensure, that the provisions of Investment law and Enterprise law are compatible with each other.

Answer:

The conditional and prohibited business sectors will be set out in a governmental decree which will take effect concurrently with the Investment Law.

The Investment Law does not set out a cap on foreign ownership of 49 per cent as the only investment condition. In addition, the Law does not specifically address this issue but instead authorizes the Government to provide for the conditions to invest in certain areas, the limitations on foreign equity ownership and other investment conditions. Therefore, there is no contradiction between the provisions of this Law and the Enterprise Law.

Question 23

Paragraph 29: Could Viet Nam please explain how it will put into practice its commitment that all future additions/deletions to the list of prohibited business sectors will comply with WTO rules? Does Viet Nam have a specific Action Plan in this respect?

Answer:

This paragraph is to reconfirm that in the future, Viet Nam will act in line with the WTO rules and its commitments upon WTO accession. As the current applicable laws of Viet Nam do not violate any rules of the WTO, no Action Plan in this respect is necessary.

Question 24

Paragraph 30: Could Viet Nam please provide examples of how it is "encouraging foreign investment in almost all economic areas"? Are there any specific Action Plans/projects in place beyond amendments to the relevant legislation?

Answer:

Except for the prohibited and some conditional sectors as have been elaborated in the Draft Report, Viet Nam may admit and/or encourage investment in other sectors.

The lists of sectors in which investment is encouraged or especially encouraged have been issued under Decree No. 24/2000/ND-CP and Decree No. 27/2003/ND-CP (which have been submitted to the Working Party).

Question 25

Paragraph 189 (and answer to Question 20 of WT/ACC/VNM/39): Can Viet Nam establish a clear legal definition for the phrase "depraved and reactionary cultural products" (as opposed to just "guidelines")?

Answer:

Under Viet Nam's regulations, if cultural products, including books, newspapers, magazines, pictures and paintings, calendars, posters, catalogues, leaflets, pamphlets, propaganda leaflets, slogans, parallel sentences, tapes, sound discs, videos, video discs, films, applied artistic works and other cultural documents and products, etc. (under HS 9701, 9703, 9706, 9705, 4901, 4902, 4903, 4904, 4909, 4910, 4911, 8524, 3706) which are found by government management authorities as "superstitious, depraved and reactionary cultural products" are all banned from production, exportation, importation, business and circulation in Viet Nam. All the definitions of "depraved and reactionary cultural products" as provided for in Vietnamese laws have been provided to the Working Party.

Question 26

Paragraph 30: We would be grateful if Viet Nam could provide justification for those areas of trade and economic activity where foreign investment is not encouraged.

Answer:

As a general policy, Viet Nam encourages foreign investments. Only a few areas of trade and economic activity where foreign investment is not encouraged are due to Viet Nam's legitimate reasons.

Question 27

Paragraph 32: Could Viet Nam provide an update on the progress of its legislation towards a "level-playing field" for foreign and domestic investors (due for consideration by National Assembly in October 2005)? Which regulations still discriminate between foreign and domestic investment?

Answer:

The update has been provided in draft Working Party report, in particular in paragraph 30, 31, 32, 33, 40, 41 and 42 of the Session on Investment Regime. Viet Nam has also submitted the draft Investment Law and draft Enterprise Law to the Working Party.

Question 28

Paragraph 36: Could Viet Nam please explain how the need for Business Co-operation Contracts (BCCs) as a condition of providing services in some circumstances relates to/differs from joint ventures?

Answer:

BCCs may be applied as one of market access limitations in a very limited number of sectors. Please see the Viet Nam's services offer for more detailed information.

On the other hand, BCCs also provide investors with another option of commercial presence without establishment of a legal entity and are more flexible than joint ventures. As such, a number of investors have opted for BCCs even though no restrictions on establishing joint ventures or wholly foreign-owned subsidiaries are applied.

Question 29

We appreciate the answer to Question 20 in WT/ACC/VNM/39. Please provide a complete list of "superstitious cultural products" which Viet Nam would not allow foreign investors to produce.

Answer:

Under Viet Nam's regulations, if cultural products, including books, newspapers, magazines, pictures and paintings, calendars, posters, catalogues, leaflets, pamphlets, propaganda leaflets, slogans, parallel sentences, tapes, sound discs, videos, video discs, films, applied artistic works and other cultural documents and products, etc. (under HS 9701, 9703, 9706, 9705, 4901, 4902, 4903, 4904, 4909, 4910, 4911, 8524, 3706) which are found by government management authorities as "superstitious, depraved and reactionary cultural products" are all banned from production, exportation, importation, business and circulation in Viet Nam. All the definitions of "depraved and reactionary cultural products" as provided for in Vietnamese laws have been provided to the Working Party.

Cultural products which are identified as "superstitious, depraved and reactionary cultural products" by the relevant state management authorities are all banned from production, exportation, importation, business and circulation in Viet Nam (regardless for commercial purposes or not). The regulation is applied on non-discriminatory basis to all organizations, individuals, domestic and foreign economic entities.

Question 30

The response to Question 21 in WT/ACC/VNM/39 designated that Ministry of Culture and Information as the Government of Viet Nam institution that determines which products meet the definitions identified in the response to Question 20. What are the criteria that the Ministry of Culture and Information uses to determine if a product is a "superstitious cultural product" or any of the other types of products listed in Question 20?

Answer:

All legally established economic entities in the Vietnamese economy are allowed to do business in cultural and information.

The competent State management agencies shall inspect and define whether a cultural product "superstitious, reactionary and depraved". The inspection process is applied to and executed by all State management agencies and to all economic sectors and shall be based on the legal documents such as the Commercial Law, the Law on Press, the Law on Publication.

Question 31

This section will need to further revision once all services negotiations have been completed.

Answer:

We would like to take note of the comment.

Question 32

Viet Nam's "Investment Law" (Draft 13), continues to include investment incentives contingent upon export.

Answer:

The latest version of draft Law on Investment is the 16th Draft. This Draft Investment Law does not include any investment incentive contingent upon export.

Question 33

We remained concerned that Viet Nam's draft investment legislation continues to incorporate export-contingent subsidies. Viet Nam should address our concerns with respect to each of these subsidies and remove the prohibited elements prior to accession.

Answer:

The latest version of draft Law on Investment is the 16th Draft. This Draft Investment Law does not include any investment incentive contingent upon export.

With respect to export subsidies in the form of investment incentives, including those operating in export processing zones that are prohibited under the SCM Agreement, Viet Nam has revised its draft Law on Investment to eliminate the practice of granting these subsidies from the date when the new rules become effective (i.e. 1 July 2006 if so approved by the National Assembly). Additionally, Viet Nam shall eliminate the prohibited subsidies in the form of investment incentives for the licensed projects no later than seven years from the date of Viet Nam's accession to the WTO in order to observe its commitments with the existing investors and stabilize the business environment. The detailed information on the subsidies programs and the schedule for elimination of the prohibited subsidies shall be elaborated in the updated notification on industrial subsidies.

Question 34

Transfers: Paragraph 6 - Chapter II, Article 9 provides a comprehensive list, but it only covers outward transfers. Should it not also include inward flows of capital? Investors may wish to bring in money to buy locally, pay workers, etc. Not all expenses, especially early on, can be met out of an investment's profits.

Answer:

The Article 9 is named "Remittance of Capital and Assets Abroad"

Article 9 of the draft Investment Law only provides for the remittance of capital, assets and other lawful revenues. The Draft Investment Law and other current Vietnamese laws do not have any limitation on the transfer of capital and lawful assets into Viet Nam to carry out the legitimate investment projects.

Question 35

Right to Buy Foreign Currencies

Paragraph 8: Chapter III, Article 18 suggests that the right to buy foreign exchange depends on the content of the draft foreign exchange ordinance. We would appreciate receiving a copy of the draft Ordinance on Foreign Exchange as soon as possible?

Answer:

The Draft of Foreign Exchange Ordinance has been submitted by the Government to the Standing Committee of the National Assembly. The 4th Draft of the Ordinance has already been submitted to the Working Party.

Question 36

Chapter 2 Investment Guarantees: Article 12, it states that if a policy change occurs which affects an investor's interests, the investor shall be entitled to the following:

- **Continue to enjoy the rights and incentives previously granted to them for a specific period of time;**
- **Enjoy a reduction of or exemption from tax, or deduct loss from taxable income; or**
- **Change the operational objective of the project.**

It is also noted that when a new law provides more favourable policies and incentives than previously applied to an investor, the more favourable policies and incentives shall apply to the investor. We note that the continuation of incentives which are contingent upon on export or the use of domestic over imported goods are deemed to be prohibited under Article 3.1(a) and 3.1(b) of the SCM Agreement. More over Viet Nam should modify Article 12 to state that investors will only be entitled to previously enjoyed incentives, which are WTO consistent, including any reduction or exemption that is used to offset previously applied incentives.

Answer:

Viet Nam takes note the drafting suggestions for this Article and would like to propose that, with respect to export subsidies that are prohibited under the SCM Agreement, Viet Nam commits:

- (i) Subsidies contingent upon localization ratios and the use of domestic over imported goods shall be eliminated upon accession to the WTO;
- (ii) Subsidies in the form of direct payment from the State budget contingent upon export performance shall be eliminated upon of accession to the WTO;
- (iii) Concerning the remaining prohibited subsidies (mainly subsidies in the form of investment incentives), Viet Nam has revised its draft Law on Investment to eliminate the practice of granting these subsidies from the date when the new rules become effective (i.e. 1 July 2006

if so approved by the National Assembly). Additionally, Viet Nam shall eliminate the prohibited subsidies in the form of investment incentives for the licensed projects no later than seven years from the date of Viet Nam's accession to the WTO in order to observe its commitments with the existing investors and stabilize the business environment. The detailed information on the subsidies programs and the schedule for elimination of the prohibited subsidies shall be elaborated in the updated notification on industrial subsidies.

Article 11 on "Investment Guarantees in the event of changes in law or policies" would be adjusted accordingly.

Question 37

Chapter 5 Investment Sectors and Geographical Areas, Investment Incentives and Support: Under Article 28 of the Investment Law, Viet Nam states it will encourage investors to invest in "manufacture of goods for export." Could Viet Nam please explain how the encouragement to produce exports under Article 28 is consistent with the conditions set forth in Question 18: Article 9 of the Investment Law and with respect to Viet Nam's obligations under Article 3.1(a) of the SCM Agreement?

Answer:

Article 32. Applicable entities for investment incentives

In the latest Draft Investment Law, the List of sectors in which investment is encouraged no longer includes the projects for production of goods for export and projects using local goods or materials.

Question 38

It is our understanding that encouraged sectors includes "manufacture of goods for export" under Article 28. Could Viet Nam please explain how corporate income tax incentives contingent upon exportation is consistent with its obligations under Article 3.1(a) of the SCM Agreement?

Answer:

Article 32. Applicable entities for investment incentives

In the latest Draft Investment Law, the List of sectors in which investment is encouraged no longer includes the projects for production of goods for export and projects using local goods or materials.

Question 39

Under Article 37 of the Investment Law, Viet Nam states that investment projects in sectors and geographical areas which investment is "encouraged," may be eligible for accelerated depreciation of their fixed assets. Could Viet Nam please explain how Article 37 is consistent with its obligations under Article 3.1(a) of the SCM Agreement?

Answer:

Article 35. Depreciation of Fix Assets

Accelerated depreciation of assets shall only apply to the projects in the List of sectors and geographical areas in which investment is encouraged. This List in the new Draft does not include the

projects for production of goods for export and projects using local goods or materials. Therefore, these provisions are consistent with the SCM Agreement.

Question 40

Article 38, please confirm that Viet Nam's incentives with respect to exemptions from duties under the Law on Export and Import Duties are consistent with Annex II and Annex III of the SCM Agreement, specifically the requirement that qualifying inputs must be consumed in the production of the exported product. Also, please confirm that materials, spare parts, components, equipment and means of transport are not eligible for duty exemptions under this law.

We note that under Annex II and III of the SCM Agreement, tax rebate schemes allow for exemption of duties only on "inputs that are consumed in the production of the exported product (making normal allowance for waste)."

Answer:

Article 33. Tax incentives

The import duty incentives available to some goods under this Article do not fall into the category of "inputs that are consumed in the production of the exported product (making allowance for waste)" as set out in Annexes 1 and 2 of the SCM Agreement. Import duty exemption for materials, spare parts, components, equipment and means of transport used for the capital construction (i.e. establishment) of the foreign invested enterprises according to the Law on Import Export Duties is not contrary to the above said requirement since it is one-off exemption that is not linked to projects producing export goods or the goods exported.

Question 41

Article 40, Viet Nam states that investors, which invest in "encouraged" sectors, shall be entitled to land rent and fee exemptions. We note that Article 28 of the draft investment law includes manufacturing of goods for export as an "encouraged" sector. Please explain how exemptions and reductions from land rent and land use fees, which are contingent upon exportation, is consistent with Viet Nam's obligations under Article 3.1(a) of the SCM Agreement?

Answer:

In the new Draft Investment Law, the list of sectors where investment is encouraged no longer includes projects producing export goods and projects using local goods or materials.

Question 42

Article 42, Could Viet Nam please further explain this article? Do investors qualify themselves for a certain level of benefits or incentives, or is it that investors must document and support whatever claim for benefits or incentives they make?

Answer:

Article 38. Procedures for grant investment incentives

According to this Article, the investor determines the conditions for investment incentives, declares those incentives, and submits the declaration together with the relevant documents for the competent body's decision (local tax office).

Question 43

Under Article 45, Viet Nam states it will provide investment support services for various activities, including the establishment of associations of exporters. Please explain how this article is consistent with Viet Nam's obligations under Article 3.1(a) of the SCM Agreement?

Answer:

Article 42: The encouragement of establishment of exporters' associations has been removed from this Article.

- State Ownership and Privatization

Question 44

Discussion at the recent Working Party meeting (16 September 2005) also raised a number of questions about the nature of "public goods and services" mentioned in this section of the report. Can Viet Nam indicate:

- (i) **If these "public goods and services" only related to those that are for final consumption for Government in Viet Nam, or did they also include goods and services procured by Government for final consumption of non-state entities.**
- (ii) **All relevant Government policies applying to their supply – i.e. competitive conditions between private suppliers and state enterprises, how prices for such goods and services are determined, and whether imported goods and services can also be provided to fulfil orders for 'public goods and services'?**

Answer:

Public goods and services are products and services necessary to social and economic life of the community and the country. Thus, the Government purchases public goods and services for the final consumption of the Government and non-governmental entities.

Government policy on providing public goods and services apply to all economic sectors. All private and state owned enterprises can take part in the provision of public goods and services by competitive bidding. The price of public goods and services are determined by bidding. For public goods and services in the field of public security and national defence, which are carried out by orders or task assignment, prices in these cases are based on government pricing regulation.

Enterprises providing public goods and services can utilize all of their resources or can import goods to ensure production and providing public goods and services.

Question 45

Paragraphs 44, 68 and Question 27 of WT/ACC/VNM/38, we note the Viet Nam statement that the list of sectors and activities where the State holds 100 per cent or the controlling equity is reconsidered in the purpose of reducing it further. We would be happy if Viet Nam could indicate when it expects this process to be finalized?

Answer:

The list of sectors and activities where the State holds 100 per cent or the controlling equity set out in paragraph 1 is the list under Decision No. 155/2004/QD-TTg. The amendments of that list would be reconsidered on the basis of the assessment of the on-going equitization programme. Therefore, Viet Nam cannot inform exactly when the amendments of this list will be finalized.

Question 46

We understand that due to the above mentioned process, the lists of Decision No. 155/2004 will be modified as well. Could Viet Nam explain the link between the list mentioned in the previous paragraph and the list of Decision No. 155/2004?

Answer:

The list of sectors and activities where the State holds 100 per cent or the controlling equity set out in paragraph 1 is the list under Decision 155/2004/QD-TTg.

Question 47

Paragraph 56, Questions 28 and 32 of WT/ACC/VNM/38 – fertilizers, we thank Viet Nam for the explanation given. We would like to Viet Nam to clarify whether 100 per cent privately owned fertilizer companies can be currently established in Viet Nam.

Answer:

Investment in fertilizer production is not restricted. To date, four 100 per cent foreign invested companies in this industry have been established.

Currently, Viet Nam does not apply any restrictive measures on the participation of organizations, individuals in the production of fertilizers. As a result, 100 per cent privately owned companies can produce fertilizers in Viet Nam.

Question 48

Question 31 of WT/ACC/VNM/38, we thank Viet Nam for the explanation given. In the sake of clarification, we would like Viet Nam to clarify, whether 100 per cent privately owned companies can be currently established in Viet Nam in the areas listed under (iii)-(v).

Answer:

As we have explained in the answer to Question 31 of document WT/ACC/VNM/38, the areas listed from (iii)-(v) only referred to the sectors where the State retains certain ratio of shares in the equitisation process. It does not mean that privately owned enterprises, including 100 per cent privately owned enterprises, are restricted from participating in these sectors.

Question 49

Question 33 of WT/ACC/VNM/38, we note the Viet Nam statement that it is currently revising the list of business sectors/lines that foreign investors are entitled to purchase shares and the limitations applicable to shares purchased by foreign investors in the Vietnamese company.

We would be happy if Viet Nam could indicate when it expects this revision process to be finalised and the necessary documents/legal texts submitted to the Working Party ?

Answer:

If adopted by the National Assembly at this year-end session, the Investment Law would take effect as from 1 July 2006. The implementing decrees of this Law, including the regulations on percentage of shares of existing Vietnamese enterprises which foreign investors are allowed to purchase, would take effect concurrently with the Investment Law.

Question 50

What definitions does Viet Nam use for the following terms: "state-owned," "state-invested," "state-controlled," and "equitized?" Would a company with 1 per cent of its shares equitized be an equitized firm? A state-invested firm?

Answer:

The concept of "State-owned": Under the 2003 Law on SOEs, this concept consists of "State-owned enterprise" and "State-owned company". The concept of "State-owned enterprise" refer to enterprises the total charter capital or more than 50 per cent is owned by the State, regardless under which law these enterprises are operating. The concept of "State-owned Company" refers to enterprises the total charter capital of which is owned by the State and operate under the 2003 Law on SOEs.

- The concept of "state-controlled" means enterprises with controlling shares or contributed capital of the State (of more than 50 per cent of the charter capital).
- The concept of "equitized" means an enterprise converted from a company with 100 per cent State owned capital into a joint stock company, regardless how many percentages of the shares in that joint stock company are held by the State.
- The concept of "state-invested firm" is not used as a term in the legislation of Viet Nam and in fact does not appear in the official statistics of Viet Nam.

Question 51

Paragraph 44: We appreciate the statistics provided on the percentage of state involvement in the economy and in trade.

In calculating these numbers, did Viet Nam including the state share of equitized firms' output?

Answer:

According to the statistical practice in Viet Nam, an equitized enterprise's output is included in the State's involvement in the economy and in trade if the State has a controlling contributed capital or shares (of more than 50 per cent of the chartered capital) in the enterprise.

Question 52

Paragraph 45: Viet Nam states that state-owned enterprises face the same bankruptcy procedures as private firms. How many state-owned enterprises have declared and gone into bankruptcy since promulgation of the bankruptcy law?

Answer:

Since the Bankruptcy Law was promulgated, 17 SOEs have been gone into bankruptcy.

Question 53

Paragraph 45: Viet Nam states "Under the new Law, equitized State-owned enterprises had the status of limited liability companies." Is this the case for all State-owned enterprises, equitized state-controlled enterprises, or equitized state minority stake enterprises?

Answer:

All State-owned enterprises, equitized state-controlled enterprises, or equitized state minority stake enterprises has the legal status as a limited liability company in the meaning that the shareholders or capital contributors are responsible for the debts and other asset liabilities of the company within their capital share contributed to the company.

Question 54

Paragraph 45: The Report notes that in the past SOE profits had been transferred to the State budget. Under the new SOE Law, how do SOEs disburse profits?

Answer:

Under the 2003 Law on SOEs, the remaining profits of a State owned company (after making up losses for the previous year and payment of corporate income tax) will be distributed as follows: (i) paying to the members contributing capital in accordance with the charter (if any); (ii) making up the previous years' losses the time limit for which to be deducted from before-tax income has expired; (iii) distributing 10 per cent to the financial reserve fund of the company until such fund reaches 25 per cent of the charter capital; (iv) distributing to other funds from the after-tax profits in accordance with law with respect to the companies operating in certain sectors (e.g. the risk insurance fund of the companies providing banking or insurance services); (v) the profits of the enterprise, after being distributed to the funds mentioned in (i) to (iv), will be distributed in accordance with the ratio between the State capital invested in the enterprise and the average capital raised by the company in that year. The profits distributed according to capital raised by the company shall be given to the employees as bonuses and used for re-investment. The profits distributed according to the capital invested by the State shall be used for re-investment in addition to the existing capital of the State in the company. Where the addition of State capital in the company is not necessary, the representative of the company owner shall decide to allocate the profits to invest in other enterprises.

Question 55

Paragraphs 45-46: In paragraph 45 Viet Nam states that "The State had abolished direct monitoring and administration of enterprises by governmental agencies." In paragraph 46, Viet Nam noted that "State-owned shares were held by line ministries," but also that "Directors of small-scale enterprises were selected by the Ministers and Chairmen of provincial People's Committees." Why is it necessary to have Ministers and Chairmen of provincial People's Committees select Directors for these enterprises? Why are Chairmen of provincial People's Committees selecting directors for enterprises owned by the ministries?

Answer:

There seems to exist a misunderstanding in this paragraph. Under the current law, the Minister and Chairman of the provincial people's committee shall appoint directors of state owned companies (wholly state-owned enterprises) if the decisions on establishment of which are issued by them respectively. It is incorrect that the Chairman of the provincial people's committee appoints directors of state-owned companies under the ministries and vice versa.

Question 56

Paragraph 46: We would appreciate further clarification of the following passage – "State-owned enterprises were self-responsible for fulfilling their tax obligations, conduct business, and utilize the State invested capital efficiently. Government Decree No. 199/2004/ND-CP of 3 August 2004 provided for self-liability of State-owned enterprises for debts and other asset obligations within the extent of the State capital invested therein."

- **What does "self-responsible" mean?**
- **What does "self-liability" mean?**
- **What does "utilize the State invested capital efficiently" require?**
- **What are the consequences for an SOE that does not fulfil its tax obligations or utilize the State invested capital efficiently?**

Answer:

- "Self-responsible" means state owned companies are granted autonomy in business activities in accordance with law and being self-responsible for their business performance and results.
- "Self-liability" means state owned companies with a legal status and liabilities for debts and assets like limited liability companies.
- "Utilize the State invested capital efficiently" is evaluated by the rate of the profits to the State invested capital.
- Like other enterprises, a State owned company shall be obliged for payment of tax and if it does not fulfil this obligation, it may be subject to an administrative penalty or prosecution for criminal offence depending on the seriousness. Where the State capital is not utilized efficiently, the Director and BOM members shall not be entitled to bonuses, pay rise or may be subject to compensation for losses if the company makes losses.

Question 57

Paragraph 46 also stated that the Government conducted periodic reviews and unscheduled assessments of SOEs' business efficiency.

- **Are these reviews made public?**
- **Could they be subpoenaed by the Competition Council (paragraph 92)?**

Answer:

The evaluation of the business efficiency of a State company shall be publicized by different methods consisting of publications, posting at the company's office, representing in the conferences of employees or at the general meeting of shareholders. Currently, no legislation of Viet Nam specifically deals with the relationship between the National Competition Council and the supervision and evaluation of the efficiency of state companies.

Question 58

Paragraphs 46-47: Different rules seem to be in effect for "large" state-owned enterprises than for other ones. What is a definition of a "large" state-owned enterprise, and how many are there in Viet Nam?

Answer:

The 2003 Law on SOEs does not contain a definition of "large" SOEs. There is no discriminatory policy according to the scale of the enterprises in Viet Nam.

Question 59

Paragraph 51: Viet Nam states that private firms can compete to provide public goods and services, except those related to national security. Could Viet Nam confirm that although it calls these goods and services "public," it will treat them as any other commercial goods or services within the meaning of the WTO Agreements?

Answer:

The enterprises participating in production and supply of public good and services must maintain a cost accounting with respect to these products and services like for other normal products and services.

Question 60

Paragraph 51: Does Viet Nam intend that non-state-owned enterprises would be able to compete to provide electric power transmission and distribution services to and from users ranging from large-scale commercial enterprises to single-family residences and apartment buildings?

Answer:

Currently, the Electricity of Viet Nam still controls the national electric transmission system. However, Viet Nam has had a plan for equitization of the companies operating in power supply and in fact, the pilot equitization has been conducted with respect to Khanh Hoa Electricity Company.

Question 61

Paragraph 51: Viet Nam states that the "Law on State-Owned Enterprises of 2003 had removed the concept of public interest State-owned enterprises so as to permit enterprises of all economic sectors to provide public goods and services." Please specify the specific provision of the law.

Answer:

The 1995 Law on SOEs provides for the form of "Public Interest State Owned Enterprises". However, the 2003 Law on SOEs does not provide for this type of enterprises. Decree No. 31-2005-ND-CP of the Government dated 11 March 2005 has expanded the scope of enterprises which can participate in production and supply of public goods and services including State owned enterprises, domestic enterprises of other economic sectors and cooperatives.

Question 62

Paragraph 54: Viet Nam needs to update its state trading enterprises notification to include all the companies listed in Table 4, state-trading enterprises trading in cigars, cigarettes, and other tobacco products, and any state trading enterprises that have not yet been notified.

Answer:

Please refer to the Annex II on trading rights attached herewith for the revised list of goods subject to State-trading of Viet Nam. Within this List, only State-trading enterprises in tobacco products that have not been notified. Viet Nam is designing the policies for the elimination of the import ban on cigars and cigarettes and will make the notification accordingly.

Question 63

Paragraph 55: Please provide data on market share sales and imports in their respective sectors of VINACAFE, VINAMILK, and VINATEA.

Answer:

Viet Nam has provided a notification on the operation of these enterprises in the format of state-trading notification of the WTO (even though these enterprises are not state-trading entities). Data other than those notified are not yet available.

Question 64

Paragraph 57: Viet Nam states that VINAMILK, parts of the VINATEA, and several state salt companies have been equitized. What percentage of equity in these companies has the state disposed of? Are they still controlled by the state or is the state a minority shareholder?

Answer:

After a recent sale of shares, the State holds 50.1 per cent shares in VINAMILK. In some salt companies, the figures are as follows: 57 per cent in Bac Lieu Salt Company, 65 per cent in Ha Tinh Salt Company, 51 per cent in Thanh Hoa Salt Company, 51 per cent in Hai Phong Salt Company.

Question 65

We thank Viet Nam for the information provided. As a result, this section is substantially improved.

Answer:

Viet Nam would like to thank for the comment.

Question 66

Its separation from the SOE/STE section lends clarity to the Draft Report.

Answer:

We take note of the comment.

Question 67

Paragraph 67: Viet Nam lists three types of state-owned enterprises: (i) enterprises which would remain 100 per cent State-owned and would not be equitized, (ii) enterprises in which the State would retain controlling shares and (iii) enterprises in which the State would dispose of all its shares. What about enterprises in which the state would retain a minority stake?

Answer:

For SOEs that do not fall in category (i) and (ii) as mentioned, authorized state agencies will, on case by case basis, consider if the State should keep minority of shares or no shares at all.

Please note the interpretation of Group 3. This Group consists of the enterprises in which the State does not hold controlling shares (less than 50 per cent) or does not hold any shares after equitization.

Question 68

Paragraph 70 notes that "from 2005 onwards, 1472 SOEs would be equitized, transferred, sold, closed, or subject to bankruptcy."

How many SOEs will be subject to bankruptcy? Under Viet Nam's bankruptcy law, what will happen to a bankrupt SOE?

Answer:

In the plan for re-arrangement of SOEs, from 2005 onwards, Viet Nam allows bankruptcy of an SOE if it is insolvent. According to Article 5 of the Law on Bankruptcy, an insolvent SOE must undergo all bankruptcy procedures like enterprises of all other economic sectors.

During 2005 to 2007, under the current plan for restructuring of SOEs, there are approximately 50 SOEs that would be subject to bankruptcy.

Question 69

Paragraph 70: Statistics presented in this paragraph suggest that since no enterprises have been moved to "Group 3" that Viet Nam has not relinquished control over a single state-owned equitized enterprise by 31 December 2004. Is this correct?

Answer:

The comment is not correct. The figures in Paragraph 70 just aim to indicate the results of equitization of SOEs up to 31 December 2004.

Equitized SOEs could be classified as equitized companies with State controlling shares; with minority of State shares and without State shares. Statistics by end of August 2005 show that, out of 2,629 equitized companies, the State keeps controlling shares in 736 equitized companies (28 per cent), keeps minority of shares in 1,341 companies (51 per cent) and keeps no shares in 552 companies (21 per cent).

The State executes the rights of shareholders in joint stock companies which have State shares as specified by the Law on Enterprise.

Question 70

Paragraph 70: Although Viet Nam states that the state retained a controlling stake in all equitized enterprises so far (since they all belonged to Group 2), it also presents a statistic that on average the state held 46.5 per cent of these firms, with the rest owned by employees and private shareholders. How does Viet Nam reconcile these numbers? Does this mean that the state counts employee holdings as state holdings? For example, the state holds less than a 50 per cent stake in Hochiminh Insurance Company, yet it is included in Group 2 – enterprises which remain under state control. How does the state control Hochiminh Insurance Company with a minority stake?

Answer:

According to the statistics of Viet Nam, the State is currently holding an average of 46.5 per cent (less than 50 per cent) of the shares in the equitized SOEs. These statistics are calculated from all equitized enterprises that part of the capital is held by the State, not just from the joint stock companies in which the State holds controlling shares.

Statistically, on average, the State keeps 46.5 per cent of shares of all equitized firms, which included but not limited to equitized firms in group 2.

Ho Chi Minh Insurance Joint stock Company belongs to Group 2, in which the State keeps exceeding 50 per cent of shares. To date, the portion of State's shares in this Company is 63 per cent out of the total. There is a typo in paragraph 70 of the WT/ACC/VNM5/Rev.1.

Question 71

Paragraph 72: Viet Nam states that at least 20 per cent of chartered capital of equitized firms was offered to private investors. However, in paragraph 70, Viet Nam states that shareholders other than the state and employees only held on average 15.4 per cent share of the equitized firms. How does Viet Nam reconcile these numbers?

Answer:

The requirement that an SOE must sell at least 20 per cent of its shares to the public is contained in Decree No. 187/2004/ND-CP dated 16 December 2004. Previously, the equitization of SOEs was conducted in accordance with Decree No. 64/2002/ND-CP. This Decree did not require that an SOE must sell at least 20 per cent of its shares like the requirement in the Decree No. 187/2004/ND-CP. It only "encouraged" enterprises to sell their shares to attract investors outside the enterprises. This explains why the average percentage of holding shares by the employees and investors is only 15.4 per cent (less than 20 per cent) as mentioned in Paragraph 72.

Out of the total number of equitized companies (about 2,629 SOEs), the number of SOEs followed the equitization process under Decree No. 187 is limited (about 300 SOEs). The reason is this Decree was issued on 16 November and was in effect from early 2005. It means that less than one year of implementation in comparison with more than ten years of equitization to date. Previous decrees other than Decree No. 187 on conversion of SOEs into joint stock companies did not require but only encouraged selling shares to outsiders. In addition, many equitized SOEs were not attractive enough to outside investors so that the State has temporarily kept high proportion of State shares or sold those unsold shares to employees.

Therefore, on average, proportion of shares kept by outside investors cannot reach the level of 20 per cent as regulated in Decree No. 187.

Question 72

Paragraph 74 notes that the total value of shares sold to foreigners should not exceed 30 per cent of a joint-stock company's registered capital.

Do all equitized companies become joint-stock companies?

Answer:

All SOEs upon being equitized are converted into joint stock companies.

According to Decree No. 187/2004/ND-CP dated 16 November 2004 on conversion of SOEs into joint stock companies, the process of converting a SOE into a joint stock company is called equitization. As a result, after equitization, all equitized SOEs will operate under the form of joint stock companies and subject to the Law on Enterprises.

Question 73

Paragraph 74 also notes that the government is considering changes to the list of sectors in which foreign investors may purchase shares and the limitations to foreign investors.

Please clarify that these changes apply to firms that are being equitized.

Answer:

Viet Nam is considering to adjust the regulations limiting foreign investors to purchase of a maximum of 30 per cent of the charter capital of an enterprise in compliance with its commitments with respect to services upon the WTO accession. Therefore, we are unable to inform the Working Party of this issue when negotiations on specific commitment is still on-going. This change (in terms of percentage and sectors) shall also apply to SOEs after equitization.

Question 74

When Viet Nam says that it reviewing the limitations applicable to foreign investors, does this mean the 30 per cent equity limitation?

Please advise when the Working Party will be able to review these changes.

Answer:

The 30 per cent equity limitation is the cap on foreign investors in purchase of shares at Vietnamese enterprises as specified in the Regulations attached to the Decision No. 36/2003/QD-TTg of 11 March 2003. The Government of Viet Nam instructed and assigned Ministry of Planning and Investment to study and issue the List of sectors and industries where foreign investors are subject to 30 per cent limitation of equity in compliance with the Law on Domestic Investment; to study and propose for increase of limitations on capital contributions and shares purchased by foreign investors exceeding the cap of 30 per cent of shares in some sectors and industries when drafting the Common Investment Law. For the time being, equity cap on foreign investors is still subject to the Regulations attached to the Decision No. 36.

Question 75

Referring to Question 45 in WT/ACC/VNM/39, we would appreciate further clarification on the timing of the proposed equitizations of the Bank for Foreign Trade of Viet Nam and Mekong Delta Housing Bank. How will Viet Nam conduct the equitizations of both banks?

Answer:

On 21 September 2005, the Prime Minister issued Decision No. 230/2005/QD-TTg on pilot equitization of Vietcombank. Equitization procedures of VCB will be carried out in pursuant to Decree No. 187 on conversion of state owned enterprises into joint stock companies. Since this is the first state owned commercial bank slated for equitization, the Prime Minister has agreed to recruit an international consulting firm to assist on valuation and equitization process of VCB. The date for valuation is from 31 December 2005.

Roadmap for selling shares is as follows: In 2006, shares will be sold in several phases, but not exceeding 10 per cent of chartered capital in each phase. The purpose of selling shares is aimed at increasing equity participation but the State shares should not be less than 70 per cent. From 2007 to 2010, the State will continue to sell more shares for further increase of equity but the State shares must not be less than 51 per cent.

On 27 October 2005, the Prime Minister issued Decision No. 266/2005/QD-TTg on pilot equitization of Mekong Delta Housing Development Bank. The starting date for valuation is 31 December 2005. Shares sold will be phased similar to Vietcombank.

Question 76

Proposed Commitment Language: The representative of Viet Nam confirmed that from the date of accession, it would provide WTO Members with annual reports on the status of privatization in Viet Nam.

Answer:

Viet Nam confirms that from the date of accession, Viet Nam will provide annual report on its equitization program as long as this program is in implementation.

- **Pricing Policies**

Question 77

We welcome Viet Nam's clarification in its response to Question 36 of WT/ACC/VNM//38 and in paragraph 82 of WT/ACC/SPEC/VNM/5/Rev.1 that no form of minimum price is applied to imported or exported products.

Answer:

We take note of the comment.

Question 78

We welcome Viet Nam's willingness to discuss commitment language on state price controls, and ask it to consider removal of the square brackets from the language in paragraph 87 of WT/ACC/SPEC/VNM/5/Rev.1:

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

Answer:

We agree with the commitment language as proposed.

Question 79

We also seek clarification on a response in WT/ACC/SPEC/VNM/38, in which Viet Nam suggests that there is no requirement for processors to purchase sugar or cotton at minimum prices, but that firms are "encouraged" to agree to "pre-committed minimum prices determined by the state".

We seek clarification as to how the Government "encourages" adoption of such price, and if it does not require firms to apply such prices how does it claim this as "product-specific price support" in its notification on domestic support (as it suggests its does on paragraph 82).

Answer:

It is not a requirement but a subsidization program where enterprises are subsidized to purchase at the minimum price.

Question 80

This section is nearly complete.

Answer:

We would like to thank for the comment.

Question 81

We are awaiting Viet Nam's report that it has implemented common electricity prices for Vietnamese and foreigners as indicated in paragraph 85.

Answer:

Viet Nam would like to reconfirm that according to Decision No.215/2004/QD-TTg dated 29 December 2004, common electricity prices for Vietnamese and foreigners has been applied since the 1 January 2005. Details of specific rates for productions and household would be referred to in the attached Annex on Electricity Price of the Decision.

Question 82

Paragraph 85: We would appreciate a more thorough description of the salary reform Viet Nam intends to institute.

Answer:

Salary policy reform was implemented in October 2004 and will be carried on in coming years.

- Minimum rate: the minimum rate will be gradually upward adjusted corresponding to economic growth rate, and labour demand and supply.
- Salary payment mechanism: salary continues to be paid to workers on the basis of their productivity and efficiency and is determined by the Agreement between employers and employees.

We propose to remove the sentence "Price reform would be conducted in tandem with a reform of salaries aimed at raising people's income" as it is no longer relevant.

Question 83

We support removal of the brackets in paragraph 87.

Answer:

We agree to remove the brackets in paragraph 87.

- **Competition Policy**

Question 84

We thank Viet Nam for the very thorough summary of its new Competition Law.

Answer:

We would like to thank for the comment.

III. FRAMEWORK FOR MAKING AND ENFORCING POLICIES

Question 85

We appreciate Viet Nam's indication in its response to Question 39 of WT/ACC/VNM/38 and in paragraph 108 of WT/ACC/SPEC/VNM/5/Rev.1 that it was revising its legal system to allow recourse to both administrative and legal appeals. We look forward to further details of these reforms and their inclusion in the Working Party report.

Answer:

Concerning the settlements of disputes through both administrative and legal appeals, Viet Nam is revising and completing our legal system to allow parties to bring their administrative disputes to courts in case the administrative settlements are not satisfactory. It is expected that the revision and amendment of relevant regulations, specifically the Law on Complaint and Denunciations and the Ordinance on Procedures for Settlement of Administrative Disputes, will be passed in 2005. Viet Nam will update the Working Party once the Law and the Ordinance are passed.

Question 86

Further to Viet Nam's response to Question 40 of WT/ACC/VNM/38, we reiterate our interest in Viet Nam making a further commitment by removal of the square brackets from the second last sentence of paragraph 117 WT/ACC/SPEC/VNM/5/Rev.1 i.e.: "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 affected parties to petition through the courts."

Answer:

We agree to adopt the following text:

117*bis*. 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 investigate such claims, and if the charges are found to be valid, would act to enforce WTO provisions without requiring the affected parties to petition through the courts. The Working Party took note of this commitment.

Question 87

We seek clarification in the Working Party report of the practical implications of the statement in paragraph 101 that the President and Government could decide on the direct applicability of whole or part of international treaties as appropriate.

We are interested in practical meaning or effect of this. Does this imply that the President or Government could determine that part of its WTO treaty commitments would be relevant to enforce following adoption of its WTO package? Or does this passage refer to Government consideration of whether treaties are appropriate in whole or part, prior to ratification of such treaties?

Answer:

Under the Law on the Conclusion, Accession and Implementation of International Treaties "Based on the requirements, content, characteristics of international Treaties, the National Assembly, the President and the Government could decide on acceptance to be bound by and the direct applicability, in whole or in part, of international treaties, as appropriate, to agencies, organizations and individuals if the international Treaties are clear and detailed enough for implementation; and make decision, or proposals to amend, abrogate or promulgate legal normative documents to implement these international treaties". This is the regulation to transform international treaties into Viet Nam's legal documents. It means that, upon joining the WTO, Viet Nam will complete internal procedures to accept to be bound by Viet Nam's commitment package in the WTO. Based on the requirements, contents, characteristics of the commitment package, the ratifying body will also decide which parts of the package need transforming into Viet Nam's laws and regulations by a legal document providing for detail implementation, and which parts do not need such transformation but can be applied directly.

Question 88

There is nothing in the decision on procedures for dealing with complaints and appeals. Could Viet Nam explain how this issue is regulated?

Answer:

The 2004 amended Law on Complaints and Denunciations has provisions on complaints, denunciations and appeals, which confirm the rights, procedures and steps to settle denunciations and appeals.

The National Assembly is currently examining and is expected to approve the draft Law on Complaints and Denunciation (amended) by the end of 2005, with the aim of making it consistent with WTO rules on complaints, denunciations and appeals. This draft Law has been submitted to WTO Secretariat for circulation to WTO Members.

Question 89

This section has improved significantly.

Answer:

We would like to thank for the comment.

Question 90

Paragraph 101 notes that in the event of a conflict between the provisions of an international treaty to which Viet Nam is a party and domestic legislation, the provisions of the international treaty would prevail.

- **Given this is the case, how will Viet Nam address conflicts between the two when they arise?**
- **In the event this situation arises, would the Government of Viet Nam move quickly to amend its legislation to correct the conflict?**

Answer:

The Law on the Conclusion, Accession and Implementation of International Treaties approved by the National Assembly on 14 June 2005, provides for relationship between domestic laws and international treaties as follows: *"In case a domestic normative legal document conflict with an international treaty which the Socialist Republic of Viet Nam is a participant, the international treaty shall prevails."* The Law also regulates that *"Based on the requirements, content, characteristics of the international treaties, the National Assembly, the President and the Government could decide on the acceptance to be bound by and the direct applicability, in whole or in part, of international treaties, as appropriate, to agencies, organizations and individuals if the international Treaties are clear and detailed enough for implementation; and make decision, or proposals to amend, abrogate or promulgate legal normative documents to implement these international treaties"*. It means that in case there is a conflict between domestic legislation and a international treaty, based on the requirements, content, characteristics of the international treaty, Viet Nam will directly apply the relevant provisions of the international treaty (if it is feasible) or amend the conflicting domestic laws and regulations in line with the international treaty.

Question 91

We may have further comments or questions pending a final review of pertinent legislation.

Answer:

We are looking forward to further detailed comments.

Question 92

We recommend the following changes to paragraph 117 and we request that Viet Nam remove the brackets.

117bis. 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 investigate such claims, and if the charges are found to be valid, would act to enforce WTO provisions without requiring the affected parties to petition through the courts.] The Working Party took note of this commitment.

Answer:

We agree with the suggestion to remove the brackets:

117bis. 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 investigate such claims, and if the charges are found to be valid, would act to enforce WTO provisions without requiring the affected parties to petition through the courts. The Working Party took note of this commitment.

IV. POLICIES AFFECTING TRADE IN GOODS

- Trading Rights

Question 93

There is still insufficient specific information about business registration in this section. Inclusion of this information is important so that foreign business entities understand the process they need to follow to be authorized to conduct business in Viet Nam.

Answer:

We are willing to address specific comments of Members and will also provide more information on registration when the new Law on Enterprises is passed by the National Assembly.

In addition, Viet Nam confirms that the registration procedures for enterprises with foreign-invested capital to engage in import and export activities shall in no case be made more restrictive than those applied to domestic enterprises.

Question 94

We request that Viet Nam provide a summary of the general registration process that foreign business entities must follow to be authorized to begin operating in Viet Nam. The response should at the very least include the following elements:

- **Government agency or agencies authorized to register business entities;**
- **Summary of the information that a business entity needs to provide to be duly registered;**
- **List of the types of business entities that are authorized to operate in Viet Nam, i.e. sole proprietorships; corporations, limited liability companies; limited partnerships, etc;**
- **Description of the appeals process in case of denial of registration; and**
- **Description of any differences in the registration process between domestic and foreign business entities.**

Answer:

The forms of enterprises operating in Viet Nam consists of: (i) limited liability companies, joint stock companies, partnerships and private enterprises (established and operated in accordance with the Law on Enterprises); (ii) State owned companies (established and operated in accordance with the Law on SOEs); (iii) Joint venture enterprises and enterprises with 100 per cent foreign owned capital (established and operated in accordance with the Law on Foreign Investment in Viet Nam).

Currently, domestic investors are subject to business registration and foreign investors are subject to investment licenses. The processes and procedures for business registration for domestic investors are principally provided for in the Law on Enterprises, Decree No. 109/2004/ND-CP of the Government dated 2 April 2004 on Business Registration and Circular No. 03/2004/TT-BKH of the Ministry of Planning and Investment dated 29 June 2004 providing guidelines on the processes and procedures for business registration. The procedures for issuing investment licenses to foreign investors are provided for in the Law on Foreign Investment, Decree No. 24/2000/ND-CP dated 31 July 2000 making detailed provisions for implementation of the Law on Foreign Investment in Viet Nam, Decree No. 27/2003/ND-CP dated 19 March 2003 on amendments of and additions to a number of articles of Decree No. 24/2000/ND-CP, Circular No. 12/2000-TT/BKH of the Ministry of Planning and Investment dated 15 September 2000 providing for guidelines on foreign investment activities in Viet Nam.

All of the above legal instruments are made public in the Official Gazette, the websites of the Ministry of Planning and Investment (<http://www.mpi.gov.vn>) and a number of other government bodies'.

Question 95

We see a direct linkage to some of the concerns we raised on Viet Nam's investment regime, where it seems that FIEs under a certain investment licence are prohibited to import for example goods of the same kind for which they have received an investment licence to produce in the country at least they would apply for a new investment licence. Yet, business has been told that they may not get this licence because not generating enough value added in the country. This picture reflects the content described in paragraph 121 of the Draft Report. Paragraph 123 of the Draft Report notes that pursuant to decree No. 45/2000/ND-CT of 6 September 2000, branches of FIEs were also allowed to import certain goods for sale in the domestic market such as machinery, equipment, materials for the production or processing of agricultural products, fertilisers, etc. provided they use the foreign exchange from exports to finance the imports. We have difficulties to see how such behaviour is in compliance with the relevant GATT Articles. The system clearly grants preference to national companies over foreign ones and denies imported goods national treatment as required by Article III of the GATT. Moreover, we see this state of regulation as being a NTB to importation prohibited by GATT Article XI. We wish to remind that this issue is already reported in the Working Party draft report. The representative of Viet Nam then proposed to phase in import and export rights gradually.

In this view, we have examined the various lists contained in the documents, which give details on the phase-in periods. A part the fact that we believe that some of the periods are excessively long, FIEs continue to face difficulties in seeing their WTO rights enforced even for products for which no such prohibition, limitation or phase-in exist according to the list the Membership has been provided with. We therefore urgently request Viet Nam to enhance transparency in the information provided regarding trading rights and reflect this in the next revision of the report. For all other cases than those listed in the mentioned lists, we seek full compliance with the relevant WTO articles (namely Art. III, XI, TRIMs).

Answer:

In order to implement the amended Commercial Law, decrees providing for detailed rules on trading rights are being drafted. These drafts have been made widely available to solicit public comments. These rules will be developed so as to envision Viet Nam's commitments under the WTO. These new rules, including those on branches of foreign enterprises, will be applied in a transparent, uniform and non-discriminatory manner and will comply with WTO's rules and Viet Nam's accession commitments.

Question 96

We welcome the improvement in Viet Nam's proposed commitments on trading rights in WT/ACC/VNM/38 and WT/ACC/SPEC/VNM/5/Rev.1 (paragraphs 119-130), however we note that trading rights for certain goods are still not to commence until 2009, and that it is still only from 1 January 2007 that all foreign direct invested enterprises will be allowed to engage in import and export activities. The restrictions to the right to trade are inconsistent with WTO requirements, including Articles XI:1 and III:4 of GATT 1994.

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

Answer:

Annex 1, document WT/ACC/VNM/38 has demonstrated Viet Nam's great efforts in making commitments on trading rights of FIEs. We would like to include herewith our new commitments on trading rights (Annex II) where the list of products subject to state trading has been further reduced and new commitments on branching are proposed to facilitate the trading activities of enterprises.

Viet Nam commits that foreign legal entities or FIEs allowed to import goods shall be entitled to sell these goods to enterprises who have the right to distribute them.

Question 97

The List of Goods Subject to State Trading (page 181 of WT/ACC/SPEC/VNM/5/Rev.1) includes some tobacco products; petroleum; motion picture film; printed books, newspapers, brochures and leaflets; records, tapes and other recorded media. We would appreciate clarification of whether this means that trading rights will only be available to State Trading Enterprises in these areas.

Answer:

Please refer to the Annex II attached with this document on revised notification on products subject to Viet Nam's state trading. Importing and exporting rights with respect to those goods is applied in accordance with Viet Nam's notification on State trading.

Question 98

Further to Viet Nam's response to Question 41 of WT/ACC/VNM/38, we seek clarification as to whether trading rights will only be available to State Trading Enterprises for products in Tables 1 and 2 of Annex 1. In particular, does Point 1 of Table 7 of WT/ACC/SPEC/VNM/5/Rev.1 not imply that "wholly Vietnamese-invested enterprises" that are also private (i.e. not STEs) also have export and import rights despite the existence of STEs. If this is the case, we seek justification for why foreign invested capital enterprises also do not enjoy similar treatment to wholly Vietnamese-invested enterprises in terms of trading rights. We seek clarification of this in the Working Part report and amendment to Table 7 as appropriate.

Answer:

Concerning products in Table 7.1 and 7.2 (Schedule of commitments on Import and Export Trading Rights), wholly Vietnamese invested enterprises also have export and import rights. For products in Table 7.3 (List of Goods subject to State Trading), import and export rights have been described in Viet Nam's Notification on State Trading.

No amendment to Table 7 is needed as Point 5 of this Table has clearly stated that trading rights referred thereto shall not affect the rights of the Government of Viet Nam to enforce WTO's rules and Viet Nam's commitments relating to State Trading.

We would like to include herewith our new commitments on trading rights (Annex II) where the list of products subject to state trading have been further reduced and new commitments on branching are proposed to facilitate the trading activities of enterprises.

Question 99

We note that in the recent Working Party meeting, Viet Nam indicated in response to a member's question that all WTO members would be guaranteed trading rights at the same time, irrespective of what arrangements had been agreed under Viet Nam's various bilateral trade Agreements (BTAs). We seek reflection of this commitment in the Working Party report.

Answer:

Viet Nam's WTO commitments on trading rights shall be applied to all WTO Members on MFN basis upon Viet Nam's accession to the WTO.

Question 100

Paragraph 130 and Question 45 of WT/ACC/VNM/38, we welcome the Viet Nam proposal to grant all enterprises with foreign direct investment full trading rights no later than 1 January 2007, except for products subject to State Trading. We also welcome the reduction of the list of products where trading rights are granted only later, in 2009. We consider these as important steps in the right direction. We however note that trading rights for pharmaceutical products, print machinery and TV and video camera recorders will only be granted as of 2009.

We would therefore urge Viet Nam to equalise treatment of foreign and domestic enterprises as regards trading rights upon accession and as regards all products allowed to be exported from and imported to Viet Nam. We also agree with the commitment language proposed by another member in Question 44 of WT/ACC/VNM/38.

Answer:

The phase-out period for trading rights in Table 7, Annex 2, WT/ACC/SPEC/VNM/5/Rev.1 has shown Viet Nam's great effort. We take note of this comment and are committed to work with all WTO Members to seek a mutually acceptable solution to this issue.

We would like to include herewith our new commitments on trading rights (Annex II) where the list of products subject to state trading have been further reduced and new commitments on branching are proposed to facilitate the trading activities of enterprises.

Question 101

Can Viet Nam confirm that importers are free to choose their distributor in Viet Nam, meaning that they can sell the imported products to any legal or natural person who has a right to distribute them?

Answer:

Yes.

Question 102

Paragraph 121: Could Viet Nam please provide detailed justification on how "not encouraging foreign investment in pure trading without a local production or manufacturing base" complies with the "National Treatment" principle under GATT Article III?

Answer:

Paragraph 121 refers to a policy in the past. Viet Nam's laws do not contain any provision that forbids foreign investment in trading. Viet Nam maintains no investment measures that are inconsistent with Article III of the GATT.

Question 103

Paragraph 126: Does Viet Nam accept that restricting importation to items specified in their investment licences or their Business Registration Certificates could amount to a non-tariff barrier to importation, prohibited by GATT Article XI? If not, could Viet Nam provide adequate evidence to refute that proposition?

Answer:

Please see the discussion that has been incorporated into the Working Party Report (paragraphs 127 through 130).

Question 104

Paragraph 127: Does Viet Nam accept that even though FDI enterprises are free to define their scope of business, the fact that they do not have the same rights to import, import for resale, or export as Vietnamese firms may amount to a breach of GATT Article III (with respect to National Treatment)? Does Viet Nam accept that any potential breach of the fundamental GATT principle of National Treatment should be remedied prior to or by the time of its accession to the WTO?

Answer:

Please see the discussion that has been incorporated in the Working Party Report (paragraphs 127 through 130).

Question 105

Paragraph 129: Could Viet Nam please provide detailed background information on why previously "unbound" products are now subject to State trading?

Answer:

The only "unbound" products that are subject to State-trading are tobacco products. These products are currently subject to import prohibition that will be abolished from the date of Viet Nam's accession. In accordance with this commitment, a WTO-consistent state-trading regime (details will be notified in due course) will be applied from the date of Viet Nam's accession.

Question 106

Paragraph 129: Could Viet Nam please provide detailed background information on why they intend to phase-in trading rights for some products by 2009 only?

Answer:

Please kindly find the rationale for the phasing-ins in Table 7 of the Draft Report of the Working Party (document WT/ACC/SPEC/VNM/5/Rev.1).

Question 107

Paragraph 130: Grateful for an update on any progress made regarding Viet Nam's proposal to grant all FDI enterprises full trading rights no later than 1 January 2007. Is there an Action Plan in place?

Answer:

Viet Nam is drafting the Decrees guiding the implementation of the Commercial Law on rights to export and import, the Law stipulates that Viet Nam shall comply with international commitments to which Viet Nam is a signatory or a member. Once the commitments on trading rights are agreed.

Question 108

Table 7 (page 173): We suggest that Viet Nam amend paragraph 3 by replacing "similar trading rights" with "no less favourable trading rights", to more clearly reflect the fundamental principle of National Treatment.

Answer:

We have taken note of the suggestion and agree to adjust the language accordingly.

Question 109

We appreciate Viet Nam's new offer on the extension of trading rights. Viet Nam's offer of full trading rights to foreign companies and individuals no later than 1 January 2007 appears to be an important development, as is the shortening of some of the transition periods. We are also glad that Viet Nam has broken down its trading rights commitments to an 8-digit level.

Answer:

We would like to thank for the comment.

Question 110

Paragraph 121: (Drafting Suggestion): It would appear that this language may be overtaken by events and out of date, and could be stricken from the report.

Answer:

We agree with the suggestion.

Question 111

Paragraph 127: Viet Nam states in paragraph 127 that business entities are free to determine the goods they will be authorized to import based on its business registration. To ensure that we understand how this works in practice, we would appreciate responses to the following questions:

- **Can business entities define the scope of their business in only one sector or across many sectors?**

- **Can a business entity simply state on its Certificate of Business Registration that it may imports goods across the entire HS tariff schedule, excluding those goods that are prohibited from importation or restricted by another law or regulation?**
- **If a company can only register in one sector, how can it be ensured that it will be able to import all of the inputs that it needs for production, without having to amend its business registration certificate?**

Answer:

Domestic enterprises are allowed under Vietnamese laws to import goods in line with their business lines registered in the Certificate of Business Registration. They will be subject to generally applied laws on importation, such as the provisions on import prohibition. Under the laws of Viet Nam, domestic enterprises are autonomous in registering any business lines, except those prohibited by the laws. With respect to the conditional business lines provided for by laws, ordinances or decrees, an enterprise may only register for and conduct such business if it satisfies all the prescribed conditions. With respect to business for which the relevant laws, ordinances or decrees requires a minimum legal capital or certain practicing certificates, an enterprise may only register for the business if it has sufficient capital or practicing certificates.

Foreign investors are issued with investment licenses on the basis of the specific investment project they are applying for. The objectives and scope of operation of the projects are specified in the investment licenses. The investment licence is also a business registration certificate.

Question 112

In paragraph 120, Viet Nam states that "wholly Vietnamese-owned enterprises were entitled to determine their scope of business at their own discretion." In paragraph 127, Viet Nam states that enterprises were free to define their scope of business (trading lines) and hence free to determine the list of imported goods indicated in their Certificate of Business Registration, except for goods listed as prohibited imports and exports. Article 61 of the Law on Foreign Investment, however, stipulated that any change in the business objective of an enterprise with foreign owned capital required approval by the competent authority.

- **Please clarify whether foreign-owned businesses are free to define their scope of business "at their own discretion" and therefore are also free to determine the list of goods they will import. Do wholly Vietnamese-owned enterprises also face the same requirement enumerated in Article 61 of the Investment Law?**

Answer:

Foreign investors are autonomous in doing business in accordance with the objectives and scope specified in the investment licenses, which have been issued on the basis of their own application.

Question 113

Paragraph 130: Please confirm that the term "full trading rights" as used in this paragraph means that a foreign invested enterprise will be able to import as the importer of record any goods regardless of whether or not they are connected to their trading line.

Answer:

Yes, our commitments on trading rights have been adjusted to reflect this (see Annex II of this document).

Question 114

Table 7, row 2: What is Viet Nam's proposed phase out period for trade in goods subject to state trading? State trading privileges within the meaning of GATT Article XVII are not necessarily meant to be permanent monopolies on export and import of commercially important products and we would like to know Viet Nam's views. Is Viet Nam prepared to ensure that these enterprises observe commercial considerations and the principles of non-discrimination in the purchase and sale of the state-traded goods, as required by Article XVII of the GATT 1994?

Answer:

Viet Nam will ensure that these enterprises observe commercial considerations and the principles of non-discrimination in the purchase and sale of the state-traded goods. Viet Nam has made commitment that the operation of all STEs shall comply with Article XVII of the GATT.

Question 115

Viet Nam states in row 2 of Table 7 that foreign invested "capital enterprises" will be allowed to be importers of record and be able to import and export "all kinds of goods." What are "capital enterprises?" Do they include trading companies whose sole activity is import and/or export or are they only those firms which engage in manufacturing? If companies will be able to trade in any goods, except for a limited list of exceptions, why is the business line registration still necessary?

Answer:

"Foreign invested capital enterprises" were identified in Table 7 on trading rights to include both trading and manufacturing enterprises.

Business registration requirements are necessary for the management and administration of the Government agencies. Domestic enterprises are also subject to the registration requirements.

Question 116

Can Viet Nam confirm that foreign individuals and companies will be able, no later than 1 January 2007, to do business in any corporate form, including foreign majority-owned joint-ventures and wholly foreign-owned trading companies?

Answer:

No later than 1 January 2007, all foreign individuals and companies can establish foreign invested enterprises, including joint ventures with foreign majority ownership and 100 per cent foreign invested enterprises or even branches that are eligible to trading rights, subject to the commitments specified in Viet Nam's commitments on trading rights.

Question 117

Row 3: Viet Nam states that "foreign individuals shall be granted similar trading rights as Viet Nam's individuals." Will this also happen no later than 1 January 2007? Also, the term "similar" is unclear. A better term would be "identical," which would also be consistent with Viet Nam's national treatment obligations.

Answer:

This provision will take effect no later than 1 January 2007.

We accept to replace the term "similar" with the term "no less favourable than" and have revised the commitments accordingly.

Question 118

In Table 7, Viet Nam lists HTS lines 8802 and 8803 in the state trading category, and it did not previously list these HTS lines as subject to state trading. Please explain the reasons for this new proposed restriction on trade.

Answer:

Please refer to the Draft Report version November 2004, in Table 13, paragraph 225, HS lines 8802 and 8803 were already in state trading category.

Question 119

Referring to the table listing the goods Viet Nam would like to restrict to State Trading, please provide an additional column explaining the rationale for restricting imports of listed products to state trading enterprises.

Answer:

Please see the Annex II of this document on revised commitments on trading rights.

Question 120

Concerning the table on state trading, we seek a commitment that Viet Nam will grant trading rights for all goods by a date certain.

Answer:

Viet Nam has committed to comply with WTO's rules on state trading enterprises, including Article XVII of the GATT.

A. IMPORT REGULATIONS

- **Ordinary customs duties**

Question 121

We welcome Viet Nam's response to Question 49 (WT/ACC/VNM/38) and its willingness to adopt the proposed commitment language on publishing tariff rate changes 15 days prior to their application (paragraph 135 of WT/ACC/SPEC/VNM/5/Rev.1).

Answer:

We would like to thank for the comment.

Question 122

We welcome Viet Nam's response to Question 51 (WT/ACC/VNM/38), and the inclusion of the proposed text on Viet Nam's Schedule of Concessions and Commitments on Goods as paragraph 139 of the revised draft Working Party report.

Answer:

We would like to thank for the comment.

Question 123

Paragraph 137: We request that Viet Nam provide the list of tariff lines that it is considering converting from *ad valorem* rates to specific rates. In light of the fact that Viet Nam has already narrowed the list to approximately 100 tariff lines, it would seem appropriate to share this list to ensure transparency and allow interested Members to comment on the list.

Answer:

List of tariff lines subject to specific tariff has been discussed in bilateral talks and will be provided to the Working Party and the WTO Secretariat upon the conclusion of all bilateral negotiations for the incorporation into the accession documents.

Question 124

We support the following commitment language for this section and request that Viet Nam remove the brackets accordingly.

140bis. [The representative of Viet Nam confirmed that from the date of accession, Viet Nam would apply tariffs on an MFN basis to [all countries and separate customs territories with which it had a WTO relationship] and would apply its authority to increase tariffs in conformity with WTO provisions and its WTO commitments. The Working Party took note of this commitment.]

Answer:

We are seeking clarification for the concept of "WTO relationship" to better understand and consider the commitment language as proposed.

- **Other duties and charges**

Question 125

We welcome the responses to Questions 52 and 53 (WT/ACC/VNM/38) and paragraphs 141-143 of the revised draft Working Party report advising that Viet Nam has eliminated all import surcharges and commits to bind its ODCs at zero upon accession. We suggest the second sentence of paragraph 144 of the draft Working Party report be amended to read:

"He further confirmed that Viet Nam had agreed to bind at zero other duties and charges in its Schedule of Concessions and Commitments, pursuant to Article II:1(b) of the GATT 1994."

Answer:

We agree with the commitment language as proposed.

Question 126

Paragraph 144: We appreciate acceptance of the commitment language in this paragraph.

Answer:

We would like to thank for the comment.

- **Tariff rate quotas, tariff exemptions**

Question 127

We note our support of a number of concerns raised by members in relation to Viet Nam's administration of Tariff Rate Quotas (TRQS) in paragraphs 150-151 of the revised draft report. We note a number of aspects that are inconsistent with Articles XI and II of GATT. We do not agree with Viet Nam's statement in paragraph 152 that its TRQ policies are consistent with WTO rules and ask Viet Nam to take further steps to address them.

Answer:

We note that many concerns by Members, including concerns over auctioning as a method of TRQ allocation, have been addressed in Viet Nam's latest TRQ Offer (document WT/ACC/SPEC/VNM/1/Rev.3/Add.4 of July 2005).

Viet Nam confirmed that from the date of accession it would apply, allocate and administer its tariff rate quotas in conformity with WTO applicable rules and regulations, including the MFN and national treatment provisions of the GATT.

Question 128

We welcome Viet Nam's statement in response to Question 56 that it was willing to accept language proposed in paragraph 103.C under Question 110 of WT/ACC/VNM/36. While Viet Nam is willing to commit that tariff rate quotas will be applied in conformity with WTO rules, we reiterate our request that it also adopt proposed commitment language now in square brackets in paragraph 153 and 154 of the draft Working Party report.

Answer:

Concerning paragraph 153, Viet Nam would adopt the following commitment:

"153. The representative of Viet Nam confirmed that from the date of accession Viet Nam would apply, allocate and administer its tariff rate quotas in conformity with WTO applicable rules and regulations, including the MFN and national treatment provisions of the GATT. The Working Party took note of these commitments."

Concerning paragraph 154, Viet Nam has proposed a slight change in the language that better reflects reality (there is no change in the substance):

"154. The representative of Viet Nam confirmed that it would replace any discretionary licensing measures currently applied 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."

The reason is that Decision No. 46/2001/QD-TTg of 4 April 2001 covered many issues relating to import-export management. Import licensing measures referred to in the paragraph is only one issue addressed by the Decision.

Question 129

We welcome that Viet Nam has confirmed (paragraph 149 of the draft report) that it will apply and administer tariff rate quotas in conformity with WTO applicable rules and regulations, including MFN and national treatment provisions of the GATT. We seek further information on the allocation and administrative arrangements that Viet Nam intends to apply to a TRQ on sugar.

Answer:

The administration arrangements for TRQ on sugar shall be in accordance with Viet Nam's Offer on TRQ and in full conformity with the WTO applicable rules. In its latest Offer on TRQ (document WT/ACC/SPEC/VNM/1/Rev.3/Add.4 of July 2005), Viet Nam proposes to allocate sugar quota to end-users.

Question 130

We note Viet Nam's response to Question 43 of WT/ACC/VNM/38, and the comment that "in principle" the allocation of TRQ on salt is through first-come first-served method. We seek clarification as to why Viet Nam indicates this is only 'in principle' and how this varies in actual practice.

Answer:

Viet Nam confirms that the allocation of TRQ on salt, as regulated in the applicable legal documents and implemented in practice, is through first-come first-served method.

Question 131

We thank Viet Nam for the information provided in paragraph 146 of the Draft Report. We note the average imports of salt over the period 1999 – 2001. Would Viet Nam please provide annual imports of salt up to 2004.

Answer:

In-quota import volume for salt in 2004 is 200,000 MT. The actual import is around 130,000 MT.

Question 132

Further to Viet Nam's response to Question 61 of WT/ACC/VNM/38, we seek clarification in the Draft Report as to whether imported materials that are imported under the tariff rate quota and then subsequently exported (with the duty drawn back), such import volumes would not count towards fulfilment of the total volume of quota provided for under general importation via the TRQ.

Answer:

The regulation has only administrative nature *per se*. Businesses may choose to simply proceed to import without seeking for an allocation of a TRQ quantity and still enjoy drawbacks as normal according to existing regulations. Import volumes then would not count towards fulfilment of the total volume of quota provided for under general importation via the TRQ.

Question 133

Paragraph 242: Grateful if Viet Nam could provide specific details on how the duty drawback arrangement (for imported products used in the manufacturing of goods for export) and the TRQ arrangements are linked.

Answer:

Businesses may choose either to apply for the TRQ and then drawback the in-quota duties or to import directly and then drawback the out-of-quota duties according to the existing rules on duty drawbacks.

Please also refer to Viet Nam's response on this point at the end of paragraph 242 in WT/ACC/SPEC/VNM/5/Rev.1 dated 5 September 2005.

Question 134

Addendum to Viet Nam's Offer on Tariff Rate Quotas (TRQs): "Importers are to be designated by the Government", as stated at Working Party meeting on 15 September, we recognize the great progress achieved by Viet Nam on TRQ administration methods. Nevertheless, we are not in a position to subscribe to the administration method identified as "Method B" in Item 4 in the latest Addendum to Viet Nam's Offer on Tariff Rate Quotas (WT/ACC/SPEC/VNM/1/Rev.3/Add.4), namely "importers are to be designated by the Government". In this regard, we wish to recall our submission of past June:

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

For these reasons we request to substitute this administration method for another one, consistent with WTO rules, so as to:

- (i) Acceptance of the Draft Report; and**
- (ii) Ensure consistency with the final schedule of concessions on tariffs and other market access commitments with GATT 94 rules.**

Answer:

The proposed Method B (i.e. Importers are to be designated by the Government) is applicable to only unmanufactured tobacco (HS 2401). In fact, it means just State-trading or producer group administration method where imports are allocated to state trading entities or a group of producers which imports (or has direct control of imports undertaken by intermediaries) the product concerned. State trading/producer group is recognized as one of principal TRQ administration methods (please refer to documents G/AG/NG/S/8 and G/AG/NG/S/20 for more information). We would welcome any comment on better language to reflect this allocation method.

Question 135

Paragraph 192: Could Viet Nam provide a firm commitment to replace its import restrictions on sugar with a Tariff Rate Quota (TRQ) before or at the time of accession? Has Viet Nam made any progress in this regard?

Answer:

Viet Nam confirms that the discretionary import-licensing regime applied to sugar shall be converted to TRQ upon Viet Nam's accession to the WTO (See Viet Nam's offer on TRQ).

Question 136

Paragraph 146: We thank Viet Nam for providing more details on its salt TRQ and information about how it is implemented. However, we would still like more information about the system.

- **Please provide further details about why there are ranges for in-quota and out-of-quota tariff rates?**
- **How are these ranges applied? How does an importer qualify for the lowest rate in the range?**
- **Could Viet Nam please provide 2004 import statistics for salt?**
- **Why do importers of salt need to report on a quarterly basis rather than just annually? This seems particularly burdensome when Viet Nam is basing its TRQ allocations on 1999-2001 import data.**

Answer:

- There are no ranges for application of TRQ in-quota and out-of-quota rates. The range for tariff rates is the summary by the WTO Secretariat. For the detailed rates for each line, please see Viet Nam's offer on TRQ.
- Import of salt in 2004 was approximately 130,000 tons.
- That importers of salt are required to report on import performance of TRQs to the Ministry of Trade not only on annual but also on quarterly basis is intended to facilitate the monitoring of tariff quota fill during the respective period so that reallocation of unused licenses may occur in a timely manner. As previously explained, there are often some delays in the availability of statistics on imports. Consequently, the Ministry of Trade would also use the data from enterprises' reports to guarantee the up-to-date and accurate source of information.

Question 137

We again request that Viet Nam eliminate the TRQ on salt and replace it with a tariff-only commitment, especially in light of the fact that no other products classified by the WTO as non-agricultural goods, are subject to a TRQ in Viet Nam.

Answer:

In Viet Nam, salt production is considered as an agricultural activity as it involves farmers.

We are looking forward to Members' understanding and flexibility in accepting Viet Nam's TRQ on salt, which is an important commodity in Viet Nam and generates the main source of income for hundreds of thousands of poor farmers. Viet Nam applies tariff rate quota to salt with a view to securing employment and ensuring income stability for those farmers producing salt.

Question 138

We renew our request that Viet Nam consider eliminating its TRQs on bird eggs, sugar, and tobacco by accession.

Answer:

Viet Nam has limited its application of tariff rate quotas to the minimum extent and demonstrated its goodwill by considerably narrowing the coverage of products subject to tariff rate quotas. Viet Nam looks forward to the reciprocal approach from the Working Party's Members in the bilateral negotiations with Viet Nam, in particular in the context that a large number of WTO Members still apply TRQ.

Question 139

We note the competing commitment language in paragraphs 153 and 154. We support the bracketed text in paragraph 153 as the sounder basis for a commitment for this section.

Answer:

We agree with the suggestion and agree to adopt the language of paragraph 153.

Question 140

Paragraph 158: We propose the following additional text for a commitment for this section:

The representative of Viet Nam confirmed that upon accession, Viet Nam would adopt and apply tariff reductions and exemptions so as to ensure MFN treatment for imported goods. He also confirmed that Viet Nam would not provide tariff reductions and exemptions contingent upon export performance, export ratios, or local content requirements. The Working Party took note of these commitments.

Answer:

Viet Nam agrees with the commitment language as proposed and will adjust accordingly.

- **Fees and charges for services rendered**

Question 141

We welcome advice that Viet Nam is considering a reduction of customs fees, but the fact remains that the customs processing fee varies depending on the volume of the goods transferred and hence is inconsistent with Article VIII of GATT 1994. We reiterate our expectation that by the date of accession Viet Nam will adjust all of its fees and charges for services rendered so that they conform with Article VIII and that Viet Nam adopt commitment language along the lines of paragraph 166 of the Draft Report.

Answer:

Viet Nam is reviewing its customs processing fees and would adjust them to conform to WTO provisions from the date of accession.

We agree with the commitment language in paragraph 166 of WT/ACC/SPEC/VNM/5/Rev.1 and agree to remove the brackets of this paragraph.

Question 142

Paragraph 161 and Question 71 of WT/ACC/VNM/38, we note that the customs processing fees are based on the quantity of imports, by weight and the form of transportation. Since these fees do not reflect the cost of services rendered, they are not compatible with Article VIII GATT. We therefore urge Viet Nam to revise the fees to the level that corresponds to the services rendered.

Answer:

Viet Nam is reviewing its customs processing fees and would adjust them to conform to WTO provision from the date of accession.

Question 143

Paragraph 161 and Question 70 of WT/ACC/VNM/38, we note that Viet Nam applies a customs fee for the purchase or sale of foreign exchange which varies according to the value of the transfer. Since this fee does not reflect the cost of services rendered, they are not compatible with Article VIII GATT. We therefore urge Viet Nam to revise the fee to the level that corresponds to the services rendered.

Answer:

Viet Nam would eliminate the fees for inspecting and counting foreign currencies remitted cross-border upon accession.

Question 144

Paragraph 163 (and answer to Question 74 of WT/ACC/WNM/39): In terms of Viet Nam's "minimum fee regimes" for importers of certain goods, could Viet Nam provide more specific evidence (for instance, a breakdown of costs) to illustrate why services rendered for the goods in question cost more than services rendered to importers of other goods?

Answer:

Regarding separate customs processing fees on automobiles and motorbikes, due to more procedures and customs services provided for checking each set of auto parts or motorbike parts, etc the relevant customs processing fees should be higher than others and be separated from other ordinary services.

Question 145

Paragraph 161: We are concerned that Viet Nam's customs processing fees based on quantity and/or mode of transportation do not comply with the provisions of GATT Article VIII. We request that Viet Nam consider amending its customs clearance system so that it is tied directly to the cost of services rendered rather than based on quantity and/or mode of transportation.

Answer:

Viet Nam is reviewing its customs processing fees and would adjust them to conform with WTO provision from the date of accession.

Question 146

Paragraph 164: We reiterate our request that the discussion of the fee Viet Nam applies to the purchase or sale of foreign exchange be moved to the section on foreign exchange controls.

Answer:

Viet Nam would eliminate the inspecting and counting foreign currencies remitted cross-border upon accession.

Question 147

We note the competing commitment language in paragraphs 165 and 166. We support the bracketed text in paragraph 165 as the sounder basis for a commitment.

Answer:

We agree with the commitment language in paragraph 166 of WT/ACC/SPEC/VNM/5/Rev.1 dated 5 September 2005 and agree to remove bracket of this paragraph.

- **Application of internal taxes to imports**

Question 148

We continue to encourage Viet Nam to indicate the steps that it will take, and over what time period, to integrate producers of unprocessed and raw agricultural products into its VAT system (reply to Question 128 of WT/ACC/VNM/36 and paragraph 178 of the Draft Report refer). Alternatively, will Viet Nam give a commitment to exempt imports of such products from the VAT from the date of accession so that it conforms with Article III of the GATT 1994?

Answer:

The National Assembly of Viet Nam has just passed the Law on the Amendments of and Additions to some articles of the Law on Excise Tax and the Law on Value Added Tax in November 2005. This

new law provides that unprocessed and raw agricultural products domestically produced or imported are not subject to value added tax.

Question 149

Paragraph 175 and Question 76 of WT/ACC/VNM/38: We welcome Viet Nam statement that Viet Nam will apply uniform excise tax rates for imported and domestically produced automobiles upon accession.

Answer:

The National Assembly of Viet Nam has just passed the Law on the Amendments of and Additions some articles of the Law on Excise Tax in November 2005. Pursuant to this new law, there is no discrimination in terms of excise tax rates on domestically produced and imported automobiles upon accession. This law will be in effect from 1 January 2006.

Question 150

Paragraph 174 and Question 77 of WT/ACC/VNM/38: We welcome Viet Nam statement that Viet Nam will equalise excise tax rates for draught and draft beer upon accession.

Answer:

We would like to thank for the comment.

Question 151

Paragraph 172: Grateful if Viet Nam could provide an update on the amendments to be made to the draft Law on Excise Tax (due to be examined by Viet Nam's National Assembly at the end of 2005) in relation to the elimination of discriminatory excise taxes.

Answer:

The National Assembly of Viet Nam has just passed the Law on the Amendments of and Additions some articles of the Law on Excise Tax and the Law on Value Added Tax in November 2005. Pursuant to this new law, there is no discrimination of excise tax rates on domestically produced and imported automobiles, beer and cigarettes upon accession as Viet Nam has committed. This law will be in effect from 1 January 2006.

Question 152

Paragraph 175: Could Viet Nam please elaborate on the preferential excise tax rates granted to automobile manufacturing enterprises when investment licenses are issued (to support the domestic automobile manufacturing industry)? Can Viet Nam substantiate that this measure is WTO-compliant? Which products are affected? Are any car-parts affected, and if so can further details be provided?

Answer:

The National Assembly of Viet Nam has just passed the Law on the Amendments of and Additions some articles of the Law on Excise Tax and the Law on Value Added Tax in November 2005. Pursuant to this new law, there is no discrimination of excise tax rates on domestically produced and imported automobiles, beer and cigarettes upon accession as Viet Nam has committed.

The excise tax is imposed on automobiles under three categories:

- automobile of and less than five seats;
- automobile of 6 to 15 seats;
- automobiles of 16 to 25 seats; and
- auto-parts are not subject to excise tax.

Question 153

Paragraph 178: Grateful if Viet Nam could clarify, in light of the National Treatment principle, the extent to which they have re-examined their provisions on Value-Added Tax (VAT) applied to unprocessed agricultural products and machinery equipment imported for fixed asset purposes by FDI enterprises.

Answer:

The National Assembly of Viet Nam has just passed the Law on the Amendments of and Additions some articles of the Law on Excise Tax and the Law on Value Added Tax in November 2005. This new law provides that unprocessed and raw agricultural products domestically produced or imported are not subject to value added tax.

Regarding VAT provision on machinery equipment imported for fixed asset purposes by FDI enterprises, this is Viet Nam's policy on encouraging FDI enterprises to invest and set up production facilities in Viet Nam. This provision favours FDI enterprises more than domestic enterprises and is not inconsistent the national treatment principle.

Question 154

We appreciate the answer to Question 83 in WT/ACC/VNM/39 with respect to Viet Nam's discriminatory excise tax rates on distilled spirits. We also appreciate the inclusion of excise tax rates Viet Nam applies to distilled spirits in Table 9 in WT/ACC/SPEC/VNM/5/Rev.1. To clarify, we ask that Viet Nam confirm in the text (paragraph 174) that it applies an excise tax rate of 75 per cent *ad valorem* to distilled spirits exceeding 80 proof (40 per cent alcohol content by volume) and that it applies an excise tax rate of 30 per cent *ad valorem* to distilled spirits between 40 proof (20 per cent alcohol content by volume) and 80 proof (40 per cent alcohol content by volume) inclusive. We also ask that all wines be assessed the same excise tax rate.

If this is the case, Table 9 should to reflect accurately the statements in the text:

2	Spirits:		
2204; 2205; 2206;	a)	Of alcoholic strength exceeding 40 per cent vol.	75
2207;	b)	Of alcoholic strength 20-40 per cent vol.	30
2208	c)	Of alcoholic strength less than 20 per cent, of wine or fruit flavoured and Medicinal and herbal wines	20

Answer:

Table 9 is the current provisions of Viet Nam on excise tax rate pursuant to the Law on the Amendments of and Addition to some articles of the Law on Excise Tax of 2003.

The National Assembly of Viet Nam has just passed the Law on The Amendments of and Additions to some articles of the Law on Excise Tax and the Law on Value Added Tax in November 2005. Pursuant to these new laws, there is no discrimination of excise tax rates on domestically produced

and imported automobiles, beer and cigarettes upon accession as Viet Nam has committed. This law will be in effect from 1 January 2006.

Question 155

Paragraph 174: We welcome Viet Nam's commitment to equalize excise taxes on beer prior to accession.

Answer:

We would like to thank for the comment.

Question 156

Paragraph 175: We also welcome the commitment by Viet Nam to eliminate the discriminatory excise tax on imported automobiles in WT/ACC/VNM/5/Rev.1 and WT/ACC/VNM/33 to bring it into conformity with Article III of GATT 94. However, Table 9 (in between paragraphs 167 and 168) lists the rate of the excise tax for H/S 8703, motor vehicles with 5 seats or less, at 80 per cent.

What will the uniform excise tax rate for autos be upon accession?

Answer:

The National Assembly of Viet Nam has just passed the Law on The Amendments of and Additions to some articles of the Law on Excise Tax and the Law on Value Added Tax in November 2005. Pursuant to these new laws, there is no discrimination of excise tax rates on domestically produced and imported automobiles, beer and cigarettes upon accession as Viet Nam has committed. This law will be in effect from 1 January 2006.

Question 157

Paragraph 178 deals with Viet Nam's VAT exemption for domestic farm production.

We note the request for technical assistance, but remain concerned that, if the exemption is not extended to imports as well, it is a violation of Article III of the GATT 1994.

Answer:

The National Assembly of Viet Nam has just passed the Law on the Amendments of and Addition to some articles to the Law on Excise Tax and the Law on Value Added Tax in November 2005. This new law provides that unprocessed and raw agricultural products domestically produced or imported are not subject to value added tax. Therefore, the new law conforms with the national treatment principle.

Question 158

Paragraph 181: We would like to suggest the following adjustment to the draft commitment 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, including those discussed in paragraphs [..., and ...], 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.

We would support removal of the bracketed text in this paragraph.

Answer:

Viet Nam agrees with the proposed commitment language of the Member and would like to have the specific commitment language as follows:

"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 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 159

Paragraph 182: As referenced in paragraph 182, Viet Nam has provided lists of chemicals that are either banned or restricted from importation in Tables 11(a) and (b). We thank Viet Nam for providing the lists, but we are still seeking more information.

- **Previously, Viet Nam has indicated that Table 11(a) includes all chemical products that are prohibited from importation based on Viet Nam being a signatory to the Chemicals Weapon Convention. However, Part 1 of Table 11(a) seems to include some chemical products that are not covered by the Chemical Weapons Convention. Could Viet Nam please provide a further explanation as to the basis for prohibiting these other 23 chemical products because they seem to fall outside of the Chemicals Weapon Convention?**
- **Could Viet Nam please provide further information as to the basis for the conditional nature of importation of chemical products listed in Table 11(b)? Some of these products traditionally move in commerce in large quantities such as chlorine and benzene and are not generally restricted.**

Answer:

The reasons that Viet Nam applied lists of chemicals that are either banned or restricted from importation are as follows:

- Chemicals in Table 11a and b are toxic ones which are explosive, flammable or corrosive that have adverse effect to human and animal health, assets, environment and national security and defence of Viet Nam; and
- In addition, Viet Nam is a participant in the Chemical Weapons Convention (OPCW). Therefore, current import-export regulations comply with the Convention.

On 2 August 2005, Vietnamese Government issued Decree No.100/2005/ND-CP on the implementation of the Chemicals Weapon Convention. The Decree completely prohibits the importation of chemicals under Table 1 and provides for conditional import licensing to chemicals under Table 2 and 3.

Concerning HS coding:

- In table 11(a), the first 23 chemicals are POP - Persistence Organic Pollutants whose HS codes are not available in Viet Nam; and
- For other products, the list of chemicals with HS codes are attached with this document (Annex III).

Question 160

Paragraph 184: We remain concerned about certain restrictions that have been placed on second-hand goods as summarized in Table 10. We are particularly concerned about the restrictions on second-hand electronics and household electric goods.

- We understand that Viet Nam has a legitimate right to ensure product safety for end users, but the breadth of this prohibition raises our concern. For example, will companies be able to sell refurbished goods or provide replacement parts that have been refurbished to service contracts?
- We request that Viet Nam provide more detailed information on the prohibition of "second-hand" goods, especially electronics and household electrical goods and whether there are any exceptions to this prohibition.

Answer:

Currently, second-hand consumer goods including electronics and household electric goods are still prohibited from importation. Refurbished goods, therefore, are not allow to import due to the inability of Viet Nam management system to:

- Distinguish between purely second-hand goods and refurbished ones;
- Distinguish between refurbished goods with electronic waste.

Question 161

Paragraph 189: We appreciate the clarification provided regarding the 4-digit HS codes in which the "children's toys" and "depraved and reactionary cultural products" prohibited from importation can be found. However, as these codes cover a multitude of products, we renew our request that Viet Nam provide a list of specific products that would fall into these two categories.

Answer:

Cultural products which are identified as "superstitious, depraved and reactionary cultural products" by state management authorities are all banned from production, exportation, importation, business and circulation in Viet Nam (regardless for trading purposes or not). The same procedures are applied to children toys having adverse effect in moral education, public order and security.

Question 162

Paragraph 190: We note that Viet Nam has committed to exclude goods equipped with encryption capability that are commonly traded from application of Viet Nam's prohibition on the importation of products with encryption capability.

This is a positive commitment that helps to ensure the free-flow of high-tech trade into and out of Viet Nam. However, despite this commitment, we still request that Viet Nam provide more information about how its encryption prohibition works and how it is applied to imports.

Answer:

According to Decision No. 46/QD-TTg dated 4 April 2001, only specialized encryption machines and software that are subject to state secret is subject to import prohibition. Encryption machines and software that are found by the State management authority as State secret will be banned from importation.

Question 163

Paragraph 194: We note the commitment that Viet Nam has made to apply fully with the WTO's Agreement on Import Licensing Procedures. We commend Viet Nam for its commitment.

Could Viet Nam provide a description in the draft Working Party Report of the difference between import licensing and line management in Viet Nam?

Answer:

Line-management refers to division of management functions among the government agencies (i.e. the focal point for management). They may or may not involve an import licensing measure.

Question 164

We look forward to reviewing Viet Nam's Import Licensing Questionnaire.

Answer:

Viet Nam's Import Licensing Questionnaire has already been submitted to the Working Party.

Question 165

We note a new line-management mechanism for the post-2005 period is in preparation. Can Viet Nam please advise the Working Party of the measures that will be applied in the post-2005 line management system and their WTO justification? Will Viet Nam please include this information in the draft report?

Answer:

As indicated in paragraph 192 of Draft Report, line management measures, which are applied by Viet Nam, aim at national security, society moral, human and animal health, plant protection, labour safety, food safety, environment protection complying with Articles XX and XXI of the GATT. Line management mechanism after 2005 will be established upon such basis. Viet Nam will update information when such mechanism for post 2005 is issued.

Question 166

Paragraph 186 and Question 84, as regards import prohibition of motorcycles with engine capacity exceeding 175cm³, we welcome Viet Nam proposal to consider non-automatic licensing

instead of import prohibition. We would urge Viet Nam to proceed in replacing the import prohibition with a licensing system.

Answer:

Viet Nam confirms that import prohibition of motorcycles with engine capacity exceeding 175cm³ shall be replaced by non-automatic licensing mechanism from the date of accession.

Question 167

Paragraph 186 and Question 85, as regards the replacing the import prohibition of used motor vehicles with an import quota, we note Viet Nam reply that the planned quota for used motor-vehicles is not too small and therefore prohibitive, considering the size of Viet Nam current market for passenger cars.

Could Viet Nam give the Working Party information on the amount of domestic production of cars and trucks and also the amount of registration of them in the last two years?

Answer:

During the 2003-2005 period, there were 51,500 cars registered on average each year, in which approximately 18,980 are trucks and 24,200 are passenger's cars.

During 2003-2004, total annual domestic production of cars and trucks were approximately 43,850.

Question 168

As regards Table 13 of the draft Working Party report which describes the planned system for used motor vehicles, we note that the additional import duty planned for used motor vehicles can only be used for products where a separate tariff line exist for used vehicles. We therefore urge Viet Nam to check the situation as regards the products listed in table 13 in order not to introduce additional duties that are not compatible with the WTO rules.

Answer:

Viet Nam has committed to eliminate ban on used automobiles and offered to apply customs tariff instead.

The current tariff nomenclature of Viet Nam completely complies with the ASEAN Harmonized Tariff Nomenclature (AHTN), which was worked out by ASEAN countries. This nomenclature does not have 8 digit HS for all used automobiles, only used ones under heading 8703 (automobile of less than nine seats) are provided for in HS 8 digits.

Other used automobiles (consisting of trucks, automobile of and more than ten seats and other automobiles of and less than nine seats) have not specified in HS 8 digit and belong to the following subheadings: 870210; 870290; 870310; 870321; 870322; 870323; 870324; 8703.31, 8704.32; 8703.34; 870390; 870410; 870421; 870422; 870423; 870431; 870432; 870490.

Under current provision, all used automobiles, which have not specified in HS 8 digit are subject to 150 per cent of tariff rates imposed on corresponding new automobiles. (This is provision in the context of maintaining a ban on used automobiles).

Viet Nam offered to the Working Party the combined tariffs (*ad valorem* and specific tariffs) on used automobiles as an appropriate measure for Viet Nam when eliminating the current ban on used automobiles.

Question 169

Paragraph 196, we welcome Viet Nam's announcement that it will fully comply with the Agreement on Import Licensing upon accession.

Answer:

We would like to thank for the comment.

Question 170

Decision No. 41/2005 and Question 86, we thank Viet Nam for its replies and the clarifications given. We would however want to come back to one of our previous comments given.

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

Article 3.2.b) of the Prime Minister's decision states that "The contents of the applications for import licences or for extension thereof shall be prescribed in a simple and clear manner".

This sentence refers the manner in which information is presented, but not to the substance, the contents of this information. Article 1.5 of the AILP refers to the contents of the information, which should be restricted to the necessary. We would urge Viet Nam to transpose this provision into its national system and to amend the Prime Minister's decision accordingly.

Answer:

Art. 3.2b of the Regulation on the import licensing attached with Decision No. 41/QD-TTg of the Prime Minister regulates that both the form and contents of the required information in the application form for import licensing should be simple and clear. It can be understood as only requiring necessary information as required by Article 1.5 of the AILP.

Question 171

Paragraph 192: Could Viet Nam elaborate on how their measures to achieve health, environmental and safety objectives (particularly regarding their use of import restrictions) meet the fundamental "least trade restrictive" test (especially on imports of used motor vehicles)?

Answer:

Viet Nam has already committed to remove the prohibition on second-hand automobiles upon WTO accession. Other measures will also be applied in a WTO-consistent manner.

Question 172

Paragraph 192: Could Viet Nam please provide further details on how they intend to ensure that their new line-management mechanism for the post-2005 period is WTO-compliant?

Answer:

As indicated in paragraph 192 of the Draft Report, line management measures which are applied by Viet Nam aim at national security, society moral, human and animal health, plant protection, labour safety, food safety, environment protection complying Articles XX and XXI of GATT. Line management mechanism for post-2005 period will be established upon such basis.

Question 173

Paragraph 195: Could Viet Nam please provide further details on the extent of the implementation of the WTO Agreement on Import Licensing to date? Is there an Action Plan they could provide?

Answer:

The Prime Minister issued Decision No. 41/QĐ-TTg dated 2 March 2005 on import licensing regulations to adjust Viet Nam's import licensing procedure in line with the AILP of the WTO. The Decision came into effect from 1 September 2005.

- **Customs Valuation**

Question 174

According to Paragraph 199 of the Working Party Report WT/ACC/SPEC/VNM/5/Rev.1, the representative of Viet Nam noted that minimum customs values had been eliminated in September 2004 pursuant to Circular No. 87/2004/TT-BTC of 31 August 2004 and that Viet Nam had incorporated fully the provisions of the Customs Valuation Agreement and the interpretative Notes in its regulations, in particular Decree No. 60/2002/ND-CP and Circular No. 118/2003/TT-BTC [except the implementation of Articles 5.2 and 6 of the CV Agreement].

We particularly note Viet Nam's acknowledgement of full implementation of the provisions of the Customs Valuation Agreement (CV Agreement), which in Article 7.2 (f) says the following: "no customs value shall be determined under the provisions of this Article on the basis of minimum customs values". However, pursuant to Circular No. 87/2004/TT-BTC of 31 August and following explanatory notes, the elimination of minimum customs values seem to apply only to a list of countries (e.g. We are not part of this list). This list is decided by the Ministry of Finance¹. Our intent is not the inclusion of our country in this list, but Viet Nam's full compliance with the provisions of the Customs Valuation Agreement. We request Viet Nam to clarify this issue and explain how full WTO compliance is possible, while applying Article 7 f in a discretionary manner and therefore excluding WTO Members from their rights.

Answer:

Viet Nam committed to fully implement the Customs Valuation Agreement of WTO upon accession.

Currently, Viet Nam is in the process of drafting legal document on Customs Valuation Agreement full implementation which would replace current regulations. The current regulations were issued to

¹ Quote of Chapter I, Article 1, Paragraph 2, of Circular 118/2003/TT-BTC: Imported goods which originated in a country, territory or national alliance (as announced by the Ministry of Finance) with which Viet Nam has agreed to determine dutiable value in accordance with the principles in the Agreement on implementation of article 7 of the General Agreement on Tariffs and Trade; and other imported goods as decided by the Prime Minister of the Government.

partly implement CVA in the preliminary phase in which some reservations was maintained and are being phased out.

This draft is worked out to ensure full implementation of Customs Valuation Agreement upon accession including transaction valuation to be applied to all WTO members and current reservations to be phased out.

Question 175

Commitment in paragraph 204: We would like to have included in the commitment language:

- **Full compliance of WTO provisions concerning customs valuation, including the Agreement on Implementation of Article VII of the GATT 94 and Annex 1 (Interpretative Note);**
- **Guarantee that any custom valuation method to be applied will be in accordance to these WTO rules; and**
- **The sentence on the confirmation that minimum prices or any system of reference prices or fixed valuation in lieu of transaction value is irrevocably eliminated by the date of accession.**

Answer:

We propose the commitment language in paragraph 204 on Customs Valuation Agreement as follows:

"The representative of Viet Nam confirmed that upon accession Viet Nam would fully implement the Agreement on the implementation of Article VII of GATT 1994 and Annex 1 (Interpretative Notes on some articles of the Agreement). Viet Nam ensures that any customs valuation method to be applied will be in accordance to these WTO rules. Upon accession, Viet Nam would eliminate minimum prices or reference prices instead of transaction value method. In addition, 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 practicable, but in any event no later than two years from the date of accession."

Question 176

Paragraph 197: Grateful if Viet Nam could provide an update on the progress of their Working Group set up to promote the implementation of the WTO Customs Valuation Agreement.

Answer:

This working group was set up in the preparation period of Customs Valuation Agreement implementation two years ago and no longer exists.

Currently, Viet Nam is making its best effort to prepare for full implementation of Customs Valuation Agreement in terms of guidelines or regulation documents as well as the infrastructures for this process.

Question 177

We note the assurances in paragraph 143 of the draft report "that the minimum customs values stipulated in accordance with Decisions Nos. 164/2000/QD-BTC of 10 October 2000, 136/2001/QD-BTC of 18 December 2001 and 164/2002/QD-BTC of 27 December 2002, affecting

imports of goods enumerated in Table 7, had been eliminated and that the new customs valuation system would apply to all imports upon accession."

- **We are reviewing the information in WT/ACC/VNM/34 and WT/ACC/VNM/35 on Viet Nam's implementation of the Agreement on Customs Valuation. We will have additional comments and questions when that review is completed.**
- **We would like to see evidence of the actual implementation of these assurances prior to the approval of Viet Nam's accession package by the Working Party. We seek to review the provisions with a view to making useful comments, as necessary.**
- **Earlier this year, we provided questions on Viet Nam's customs valuation regime bilaterally. We understand that based on these comments, Viet Nam is preparing amendments to its legislation.**
- **Viet Nam's responses to our comments were not, however, totally satisfactory, as many of our objections to current provisions were dismissed with the response that Viet Nam did not consider the provision at issue to be inconsistent with the Agreement.**
- **We will be providing these comments and questions to the Working Party, hoping to spark more forthcoming responses on this critical issue.**
- **Concerning the dueling commitment language in paragraph 144, the language in the second set of brackets is more acceptable, but will need further revision to specifically address remaining deficiencies in Viet Nam's customs valuation regime.**

Answer:

- We confirm that minimum customs values were eliminated. All decisions on minimum customs values are no longer in effect.
- Viet Nam has already committed to fully implement Customs Valuation Agreement upon accession.
- Currently, Viet Nam is making its best efforts for the preparation of full implementation of this commitment.
- Due to the highly technical aspect of Customs Valuation Agreement, Viet Nam would like to welcome direct discussion with the interested Members at the technical level in order to efficiently solve the technical concerns.
- In the coming time, Viet Nam would adjust current regulations to fully implement Customs Valuation Agreement upon accession.
- Regarding commitment language in paragraph 204, Viet Nam would like to propose as follows:

"The representative of Viet Nam confirmed that upon accession Viet Nam would fully implement the Agreement on the implementation of Article VII of GATT 1994 and Annex 1 (Interpretative Notes on some articles of the Agreement). Viet Nam ensures that any customs valuation method to be applied will be in accordance to these WTO rules. Upon accession, Viet Nam would eliminate minimum prices or reference prices instead of transaction value method. In addition, 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 practicable, but in any event no later than two years from the date of accession."

- **Rules of origin**

Question 178

Paragraph 209: Grateful for an update on the progress of Viet Nam's compliance with the WTO Agreement on Rules of Origin, particularly in relation to updated provisions in Viet Nam's legal framework.

Answer:

The Commercial Law (amended) was issued in 2005 and comes into effect on 1 January 2006, providing provisions on rule of origin (Article 3 and Article 33).

Currently, the Government is drafting a Decree providing guidelines for the amended Commercial Law on origin of goods in line with WTO rules and regulations.

The Decree will be submitted to the Government for approval in the end of 2005.

Question 179

Paragraph 210: While we appreciate the assurance that Viet Nam will fully implement the Agreement upon accession, there is clearly resistance to doing so, and to acceptance of the need to provide legislation addressing both broader implementation of the Agreement and the provisions of Article 2(h) and paragraph 3(d) of Annex II of the WTO Agreement on Rules of Origin, i.e.

- (a) that for both non-preferential and preferential trade, upon the request of an exporter, importer or any person with a justifiable cause, assessments of the origin that would be accorded to a good are issued as soon as possible but no later than 150 days after the request;
- (b) that requests for such assessments shall be accepted before trade in the good concerned begins and may be accepted at any later point in time; and
- (c) that such assessments shall remain valid for three years provided that the facts and conditions, including the rules of origin, under which they have been made remain comparable.

Answer:

Viet Nam takes note of the comment and will take it into consideration while drafting Decree providing guidelines for the Commercial Law (amended) on origin of products.

Question 180

We would appreciate an explanation of Viet Nam's reluctance to comply with this portion of the Agreement, as it brings into question the broader commitment.

- We would like to see the draft law that will establish a WTO-consistent rules of origin regime and confirm the existence of determination of origin prior to importation before finalization of Viet Nam's accession documents.
- We look forward to Viet Nam's enactment of its new Commercial Law and to an opportunity to review its provisions for conformity with appropriate WTO rules and disciplines, including those found in the Agreement on Rules of Origin.

Answer:

We are committed to implement all the provisions of the Agreement on Rules of Origin from the date of accession.

The Commercial Law (amended), was issued in 2005 and comes into effect on 1 January 2006, providing provisions on rules of origin (Article 3 and Article 33).

Currently, the Government is drafting Decree providing guidelines for Commercial Law (amended) on origin of products in line with WTO rules and regulations.

- **Other customs formalities**

Question 181

Paragraph 212: To what extent has Viet Nam implemented the Revised Kyoto Convention on Simplified and Harmonized Customs Procedures? Grateful if Viet Nam could provide more detailed information, particularly in relation to strengthening customs procedures and protection of intellectual property rights (including capability of border measures).

Answer:

Viet Nam has joined the Kyoto Convention (1974) on Simplified and Harmonized Customs Procedures and is currently taking necessary steps to join the Revised Kyoto Convention (2000). Therefore, Viet Nam is not yet obliged to comply with standards provided for in the Revised Convention. However, standards in both Conventions were provided for in the 2000 Customs Law and Government Decree No. 101/2001/ND-CP of 31 December 2001 providing detailed customs procedures and customs control and supervision.

The draft Intellectual Property Law of Viet Nam (Articles 219 through 223 Section 2 Chapter XVIII of the 9th draft that was provided to the Working Party and made public on the website of the National Office of Intellectual Property of Vietnam: <http://www.noip.gov.vn>) also contains provisions on intellectual property control over exported and imported goods in compliance with the current customs legislation of Viet Nam and the TRIPS.

Regarding Kyoto Convention:

- In terms of legal documents: the Kyoto Convention provides for 148 norms/standards on simplification and harmonization of customs procedures. In this regards, Viet Nam has qualified for 81 norms, including norms on definitions on customs inspection, procedures; norms on clearance, other customs procedures, norms on customs tariff and taxes; norms on customs inspections; and
- In terms of infrastructure: Viet Nam Customs is carrying out its customs reform and modernization. The pilot e-customs clearance has just been implemented in some big cities. The reform and modernization process is implemented under a project funded by the World Bank and is projected to gradually remove the difficulties in infrastructures.

Information on strengthening customs procedures and IPR protection:

- The customs law provides that intellectual property owner who is protected under law and regulation is entitle in the long term or in specific case to make request to customs authority to temporarily stop the customs clearance of the goods of IPR violation;

- Provisions on order of relevant customs procedure to cease IPR violated goods clearance, temporarily stop or prolong this period, guarantee provision, etc are in line with minimum standards of TRIPS and of the World Customs Organization; and
- Viet Nam customs law provide IPR goods owner have the right in long term to request customs to cease clearance of suspected IPR violated goods. (Article 58-TRIPS).

Question 182

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

Answer:

Viet Nam has already become a member of the International Convention on the Simplification and Harmonization of Customs Procedures.

- **Pre-shipment Inspection**

Question 183

We renew our request that Viet Nam accept the proposed commitment language contained in paragraph 216 of the draft report.

Answer:

We agree with commitment language as follows:

"The representative of Viet Nam stated that if pre-shipment inspection requirements were introduced, they would be temporary and in conformity with the requirements of the Agreement on Pre-shipment Inspection and other WTO relevant Agreements. Viet Nam would ensure that such enterprises operating on its behalf complied with the provisions of WTO Agreements including the Agreements on Technical Barriers to Trade, Sanitary and Phytosanitary Measures, Import Licensing Procedures, the Implementation of Article VII, Rules of Origin, the Implementation of Article VI (Antidumping), Subsidies and Countervailing Measures, Safeguards, and Agriculture. The establishment of charges and fees would be consistent with Article VIII of the GATT 1994 and Viet Nam would ensure that the due process and transparency requirements of the WTO Agreements, in particular Article X of the GATT 1994 would be applied. Decisions by such firms could be appealed by importers in the same way as administrative decisions taken by the Government of Viet Nam. The Working Party took note of these commitments."

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

Question 184

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

We look forward to Viet Nam's responses, and suggest that additional legislation may be necessary to address the deficiencies identified. We also will need to look again at possible additional commitment language.

Answer:

We are willing to address the relevant comments and questions of Members.

Question 185

We would like to propose that the following additional paragraph be added to this section:

219bis. Several members of the Working Party noted that Viet Nam was continuing the process of transition towards a full market economy. Those members noted that under those circumstances, in the case of imports of Vietnamese origin into a WTO Member, special difficulties could exist in determining cost and price comparability in the context of anti-dumping investigations and countervailing duty investigations. Those members stated that in such cases, the importing WTO Member might find it necessary to take into account the possibility that a strict comparison with domestic costs and prices in Viet Nam might not always be appropriate.

Answer:

We cannot accept the suggestion, as we do not understand which provisions of the Agreement on Anti-dumping the suggestion is referring to.

Question 186

Concerning the implementation of a Countervailing Duty Law (Draft Follow-Up Questions to Viet Nam on WT/ACC/VNM/39), Viet Nam answer to Question 114 (the following excerpt is only one part of the answer to Question 114):

"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."

Please clarify whether the 30 days in which exporters or foreign producers have to respond is "business days" or "calendar days."

Answer:

The 30 days in which exporters or foreign producers have to respond under Article 24.2 of the Decree No. 89/2005/ND-CP dated 11 July 2005 of the Government Detailing the Implementation of a Number of Provisions of the Anti-Subsidy Ordinance (hereinafter called "Decree No. 89/2005/ND-CP") is "calendar days", not "business days".

Question 187

Viet Nam answer to Question 114 (the following excerpt is only one part of the answer to Question 114):

"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 time-frame allowed for competent authority to make notice or publication of such information or decisions thereby."

The Decree Detailing the Implementation of a Number of Provisions of the Ordinance on Measures Against Subsidized Goods Imported into Viet Nam (Subsidies Implementation Decree) notes, in Articles 29, 36, 34, and 38, that decisions "shall be notified publicly by appropriate means to the parties concerned..."

We urge Viet Nam to establish an official gazette or other official publication in which such decisions will be notified, and to include that information in its Subsidies Implementation Decree.

Article 30 does not stipulate that the Government of Viet Nam will make public notice of its decision to terminate an investigation. Does Viet Nam envision that it will do so?

Article 34 does not specify a time frame for notification of an undertaking. Can you please tell us what the time frame will be for any actions concerning undertakings?

Answer:

- In addition to "appropriate means" provided for under Articles 29, 34, 36 and 38 which are National Television, newspapers and other official communication channels, official postings on the Ministry of Trade's website, etc to publicly notify all interested parties of those documents and decisions stipulated under these articles, the Ministry of Trade will public an Official Bulletin on anti-dumping, anti-subsidy and safeguard petitions in which those related decisions will be published.
- Pursuant to Article 30 of the Decree No. 89/2005/ND-CP, the decision on termination of investigation shall be notified in writing or in appropriate means to all related parties. Viet Nam believes that those related parties stipulated in Article 11 of the AS Ordinance are so broad that they include all people who need to know the information about the termination of investigation. Therefore, it can be said to make "public notice" of this decision on termination of investigation.
- Article 34.2 provides for the making public notice of the decision on undertakings but does not provide for the time-limit to make such public notice. This time-limit shall be included in the Working Process of the Investigation Agency. We propose to make public notice of this decision within a time limit of 7 working days after the issuance of such decision.

Question 188

Viet Nam answer (to Question 178 in WT/ACC/VNM /36)

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

Viet Nam's Decree of the Government Setting Forth Detailed Regulations and Guidance for Implementing a Number of Provisions of the Ordinance on Antidumping or Imports into Viet Nam (AD Implementing Decree) fails to discuss how reviews should be requested and will be undertaken, including their time frame, in accordance with Article 11 of the Antidumping Agreement. Please clarify these omissions.

Answer:

When drafting the Decree No. 90/2005/ND-CP dated 11 July 2005 of the Government Detailing the Implementation of a Number of Provisions of the AD Ordinance (hereinafter referred to as "Decree No. 90/2005/ND-CP"), the issue of providing details to the provisions on review procedures upon the request of interested parties was given thorough consideration. However, Viet Nam believes that Article 24 of the AD Ordinance is sufficiently clear that interested parties can request the Minister of Trade to make a decision on the initiation of a review and the review process can be conducted normally. In addition, the time-limit for this review which is no longer than one year is compatible with Article 11 of AD Agreement. Therefore, the Decree No. 90/2005/ND-CP does not provide further details on this matter.

Question 189

Viet Nam answer (to Question 178 in WT/ACC/VNM/36)

"The regulation on when parties will receive the essential facts under consideration and opportunities for parties to submit information and make arguments to the competent administering authority."

The AD Implementing Decree does not clearly comply with AD Agreement Article 6.2 that "authorities shall, on request, provide opportunities for all interested parties to meet those parties with adverse interests, so that opposing views may be presented and rebuttal arguments offered." Instead, Article 29.1 of the AD Implementing Decree notes that consultations will be held "Upon the consultation session time-scheduled specified in the decision to initiate the investigation..." However, it does not appear that Article 21.1(e) mandates that a consultation time-schedule be published in the decision to initiate the investigation.

The problem with this is two-fold: firstly, that the time-schedule for consultations is seemingly not mandatorily published, and secondly, it does not appear that the authorities allow for additional opportunities for parties to request consultations, outside of those listed in the time-schedule.

Please clarify how Viet Nam will comply with Article 6.2 of the AD Agreement.

Answer:

- Article 14 of the AD Ordinance stipulates that investigation agencies are obliged to hold consultations. This is a required procedure in an anti-dumping case.
- Article 21.1(i) of the Decree No. 90/2005/ND-CP provides for the content of the decision on initiation of investigation which includes "the process on resolving the anti-dumping case", including the time-frame for the organization of consultations, such as specific time frames for each consultation. Therefore, the organization and the time frame for such consultations are the mandatory contents of the decision on initiation of investigation.
- Article 6.2 of the AD Agreement does not provide any provisions on further consultations. However, after participating a consultation, interested parties have the rights to provide additional information to protect their own rights and investigation agencies would continue the investigation procedures as stipulated in the Ordinance and Decree.
- Moreover, Article 29.4 of the Decree No. 90/2005/ND-CP gives interested parties a chance within seven working days after the date of holding the consultations to send their opinions on the anti-dumping case to the investigation agency. Further request for consultation is necessary, the timeframe for consultation may be accordingly revised.

Question 190

We noted in Question 178 of WT/ACC/VNM/36 that Articles 8 and 9 of Viet Nam's AD Ordinance omitted the requirement of AD Agreement Article 5.2(ii) to include a list of known persons importing the product to be investigated. Article 18 of Viet Nam's AD Implementing Decree seemingly fails to rectify this omission. Please clarify that the dossier requesting the imposition of antidumping measures must include a list of known persons importing the product to be investigated.

Furthermore, we highlighted in Question 178 with reference to Chapter I, Article 3, No. 3 of Viet Nam's AD Ordinance that Viet Nam should confirm whether it will have a preference for using third country export prices or constructed value if there was not a viable domestic market upon which to base normal value. We also noted that Viet Nam should confirm how the authorities will determine a product's country of origin, particularly when the merchandise is shipped through third countries. These two issues were not answered in WT/ACC/VNM/39, nor addressed in Viet Nam's AD Implementing Decree. Please provide a detailed responses to these concerns.

Answer:

Article 11 of the AD Ordinance stipulates the related parties in the investigation process, (in which Point 3 particularly identifies organization or individual importing goods are subject to AD measures. This illustrates the important role of organization or individual in the investigation and the compliance with the AD Agreement.

Article 3.3 of the AD Ordinance provides for two alternative methods for calculating the normal value when there is no viable domestic market of like products. In the process of implementation, depending on specific circumstances, the investigation agency shall choose to apply one method out of those listed in Article 3.3 on the principle of fairness, transparency and impartiality.

Question 191

Based on the Decree Detailing the Implementation of a Number of Provisions of the Ordinance on Measures Against Subsidized Goods Imported Into Viet Nam and the Decree of the Government Setting Forth Regulations and Guidance for Implementing a Number of Provisions fo the Ordinance on Anti-dumping of Imports into Viet Nam, are the Subsidies Implementing Decree and the AD Implementing Decree intended to be used to modify their respective Ordinances?

Answer:

Decree No. 89/2005/ND-CP and Decree No. 90/2005/ND-CP are promulgated to give details to the provisions of the respective Ordinances on the principle of ensuring that the Decrees cannot be contrary to the provisions of the Ordinances. Therefore, those Decrees are not intended to be used to modify their respective Ordinances.

Question 192

Where there is a conflict between the Implementing Decree and the Ordinance, which document governs?

Answer:

The Implementing Decrees cannot be contrary to the provisions of the Ordinances.

Question 193

Regarding the Decree Detailing the Implementation of a Number of Provisions of the Ordinance on Measures Against Subsidized Goods Imported Into Viet Nam, Article 5 Determination of major proportion of the total volume, quantity or value of like products produced by domestic industry:

Article 5 seems to be an attempt to describe, in conjunction with Article 8 of the Ordinance On Measures Against Subsidized Products Into Viet Nam (hereinafter referred to as the Anti-subsidy Ordinance), the definition of the necessary support of domestic industry needed to initiate a subsidies investigation. However, neither of these articles fully comply with SCM Article 11.4 which defines how domestic support will be measured. Instead, Article 5 of the Implementing Decree defines how a majority of production will be determined in Viet Nam. The Article fails to relate the majority of production of a product to the initiation of an investigation. Article 8.1(a) of the Anti-Subsidies Ordinance sets a threshold for domestic support of 25 per cent instead of more than 50 per cent, as outlined in AD Agreement Article 11.4.

Furthermore, neither the Ordinance nor the Implementing Decree state that no investigation will be undertaken if domestic support is less than 25 per cent of the total production of the like product produced by the domestic industry.

We encourage Viet Nam to ensure that its provisions for determining domestic support in order to initiate a countervailing duty investigation are compliant with AD Agreement Article 11.

Answer:

There may be a misunderstanding in the Article 5 of the Decree No. 89/2005/ND-CP and Article 8 of the AS Ordinance. Article 5 of the Decree explains the meaning of "major proportion" in the definition of "Domestic industry" as stipulated under Article 2.2 of the AS Ordinance. Accordingly, "The Domestic industry means groups of domestic producers or their representatives that produce goods with volume, quantity or value accounting for a major proportion of" Article 8.1 of the AS Ordinance defines the concept of "on behalf of the domestic industry". Based on Article 8.1, two conclusions can be made as follows:

- First, an anti-subsidy investigation shall not be initiated when volume, quantity or value of goods produced by or represented by the applicants account for less than 25 per cent of the total volume, quantity or value of the like product produced by the domestic industry.
- Second, the applicants are considered to be "on behalf of the domestic industry" only if the applicants also meet the requirement that the volume, quantity or value of goods produced by the applicants and those supporting the application requesting the imposition of anti-subsidy measures must be more than the volume, quantity or value of the like product produced by those domestic producers objecting to the application requesting the imposition of anti-subsidy measures. In other words, the production of those domestic producers supporting the application (including those producers filed the application) must account for over 50 per cent of the total production of like products produced by all the domestic producers supporting and those domestic producers objecting to the application.

Therefore, the AS Ordinance and the Decree No. 89/2005/ND-CP are fully compliant with Article 11.4 of SCM Agreement.

Question 194

How is Article 15, " Persons participating in the process of handling anti-subsidy cases", of the Decree intended to be implemented *vis-a-vis* Article 11 of the Anti-subsidy Ordinance which both describe parties interested in anti-subsidy cases? It seems that Article 15 of the Decree is much more limited in its explanation.

Will parties interested in or participating in the investigation be made to register with the Government of Viet Nam? If so, what are the time limits on such registration?

Answer:

Article 15 of the Decree No. 89/2005/ND-CP provides for who shall participate into the process of resolving the anti-subsidy case, including the applicants, defendants, their lawyers and other related parties. "Related parties" is already defined in Article 2.1 of the Decree No. 89/2005/ND-CP to include all parties listed in Article 11 of AS Ordinance. Therefore, Article 15 of the Decree only classify those related parties listed in Article 11 of AS Ordinance in order to provide for different rights and obligations of different groups of related parties respectively (See Article 16, 17, 18 of the Decree). Therefore, Article 15 of the Decree does not limit the scope of Article 11 of the Ordinance.

The AS Ordinance and the Decree No. 89/2005/ND-CP do not provide that related parties listed in Article 11 of the AS Ordinance must register with Vietnamese Government.

Question 195

Article 16 Rights and obligations of applicants and defendant and Article 27 Consultation in investigations.

Articles 16 and 27 of the Subsidies Implementing Decree and Article 16 of the Anti-subsidy Ordinance both fail to comply with Article 13.2 of the SCM Agreement that requires that "throughout the period of investigation, Members the products of which are the subject of the investigation shall be afforded a reasonable opportunity to continue consultations..."

Please clarify that Viet Nam will allow for those parties interested in or participating in the investigation to request consultations, outside of the consultations offered by the Government of Viet Nam.

Answer:

The legal documents are issued when Viet Nam is not yet a WTO Member. Therefore, legally speaking, this provision of the SCM cannot be applied. However, as being confirmed at the outset, pursuant to Article 29 of the AS Ordinance, when Viet Nam become a member of WTO, related parties shall be entitled to those rights provided by SCM Agreement, including those provided under Article 13.2 of the SCM Agreement.

Question 196

Article 20 Assessment of the files requesting application of anti-subsidy measures in cases where there is an applicant

Article 20 of the Subsidies Implementing Decree refers to Article 8.1 of the Anti-subsidy Ordinance in its definition of how support from the domestic industry for the investigation will be determined. Please see Question 6 regarding Article 8.1 of the Anti-subsidy Ordinance as well as Article 5 of the Subsidies Implementing Decree. All three of these Articles fail to fully comply with SCM Article 11.4.

We again urge Viet Nam to ensure that its provisions for determining domestic support for an investigation are in accordance with the SCM Agreement.

Answer:

As answered under Section VI above relating to Article 5 of the Decree No. 89/2005/ND-CP and Article 8.1 of the AS Ordinance, there is a misunderstanding about these Articles. Accordingly, the provisions of these Articles are not contrary to Article 11.4 of the SCM Agreement. Consequently, Article 20 of the Decree No. 89/2005/ND-CP is also compliant with the provisions of the SCM Agreement.

Question 197

Article 21 Preparation of files requesting application of anti-subsidy measures in cases where there is no applicant: Article 21 notes that "Where there is no applicant but there are signs that subsidized goods imported into Viet Nam cause or threaten to cause, material injury to a domestic industry..."

However Article 11.6 of the SCM Agreement requires that the authorities shall proceed "in special circumstances" and "only if they have sufficient evidence..."

Please confirm that the Vietnamese authorities will only proceed with an investigation in special circumstances and once they have sufficient evidence that subsidized goods cause or threaten to cause material injury to a domestic industry.

Please describe the general set of circumstances in which Viet Nam may consider such an action.

Answer:

Article 21 of the Decree No. 89/2005/ND-CP only provides for the preparation of files requesting the application of anti-subsidy measures, as apposed to making a decision on initiation of investigation. Accordingly, when there are signs that subsidized products causing or threatening to cause material injury to the domestic industry, the Minister of Trade only decides to assign the investigation agency to verify and examine whether or not there are sufficient evidences about the subsidized products causing or threatening to cause material injury to the domestic industry. The results of such works can be a file requesting the application of anti-subsidy measures. However, after collecting and verifying the information, the investigation agency can find that there are not sufficient evidences to establish a file to make a recommendation to the Minister of Trade to make a decision on initiation of investigation. Based on such files, the Minister of Trade shall decide whether there are sufficient evidences to make a decision on initiation of investigation. Moreover, Article 8.2 of the AS Ordinance also provides clearly that the Minister of Trade only make a decision on initiation of investigation in special circumstances "when there are clear evidences about the subsidized goods being imported into Viet Nam causing or threatening to cause a material injury to the domestic industry."

The circumstances in which Article 21 can apply are that through different sources of information such as statistical data, etc., signs of subsidized products causing or threatening to cause material injury to the domestic industry are detected and that would cause adverse effect to the interests of Viet Nam.

Question 198

Article 24 Questionnaire: Please clarify whether the 30 days in which defendants have to respond is "business days" or "calendar days."

Answer:

As answered in Section I, the 30-day period under Article 24.2 of the Decree No. 89/2005/ND-CP shall be understood as "calendar days", not "business days".

Question 199

Article 26 Verification of relationship between subsidized goods imported into Viet Nam and material injury or threat to cause material injury to a domestic industry: Article 26.2 states that "Where necessary, in addition to the subsidization of the goods imported into Viet Nam, the investigation body may review further other elements causing or threatening to cause, material injury to a domestic industry."

- **What additional factors or elements does the Decree envision beyond the information looked at in Article 15 of the Ordinance?**
- **Will the results of these reviews be made public?**

Answer:

- Article 15 of the AS Ordinance lists criteria to determine "material injury or threat to cause material injury to a domestic industry". Meanwhile, Article 26 of the Decree No. 89/2005/ND-CP defines criteria to determine the "causal relationship" between "the subsidization" and "material injury or threat to cause material injury to a domestic industry". Therefore, the content of those two Articles are different from each other. Article 26.2 provides for cases, when necessary, where "material injury or threat to cause material injury to a domestic industry" can be caused by not only the subsidization of the investigated goods" but also by other elements, the investigation agency shall review those elements to determine exactly the causal relationship. The elements may include decreasing domestic capacity due to technology, manpower factors...
- The review, in combination with other reviews, shall be a base for the preliminary conclusion and final conclusion in an anti-subsidy case. These conclusions shall be made public.

Question 200

Article 27 Consultation in investigations: Both Article 27 of the Subsidies Implementing Decree and Article 16 of the Anti-subsidy Ordinance do not appear to indicate how the authorities will notify interested parties and the public that consultations will be held. Please clarify how public notice will be given that consultations will be held, in order for interested parties to provide the necessary information in a timely manner.

Answer:

As answered in the Section II, "Process for handling an anti-subsidy case", which includes process to open consultation meetings, is part of the decision on initiation of investigation stipulated by Article 22 of the Decree No. 89/2005/ND-CP. The decision shall be made public. Therefore, relevant parties shall be informed of when consultations should be held right after the decision is made public.

Question 201

Article 28 Confidentiality of Information: Please confirm that Viet Nam will require that all non-confidential summaries of confidential information will include sufficient enough detail "to permit a reasonable understanding of the substance of the information submitted in confidence" in accordance with SCM Agreement Article 12.4.1.

Please confirm that information on all ex-parte meetings will be part of the investigation record and will be available to the public on a timely basis.

Answer:

Article 28.2 of the Decree No. 89/2005/ND-CP provides for the obligations of any party providing confidential information to enclose to the information ... a summary of the confidential information that could be revealed to other relevant parties." The summary must include sufficient details to permit a reasonable understanding of the substance of the information submitted in confidence in accordance with SCM Article 12.4.1.

Article 28 only requires confidentiality for some types of information, i.e. only these should be kept confidential. Other information including the information on all ex-parte meetings shall be available to the public. (See further Articles 16.1, 17.2 and 18.3 of the Decree No. 89/2005/ND-CP).

Question 202

Articles 32 - 35 of the Subsidies Implementing Decree and Article 23 of the Anti-subsidy Ordinance: Please clarify that, "if an undertaking is accepted, the investigation of subsidization and injury shall nevertheless be completed if the exporting Member so desires of the importing Member so decides" in accordance with Article 18.4 of the SCM Agreement.

Answer:

As being confirmed at the outset, Article 18.4 of the SCM Agreement shall be applied when Viet Nam becomes member of the WTO.

Question 203

Regarding the Decree of the Government Setting Forth Detailed Regulations and Guidance for Implementing a Number of Provisions of the Ordinance on Antidumping or Imports into Viet Nam, Article 4 Determination of major proportion in volume, quantity or value of like product(s) produced by domestic industry and Article 19 Appraisalment of the dossier requesting the imposition of antidumping measures filed by Applicant(s).

It's not clear how Articles 4 and 19.2(a) of Viet Nam's AD Implementing Decree are to be implemented *vis-a-vis* Articles 2.5 and 8.1 of Viet Nam's AD Ordinance. Please clarify how

these Articles are compliant with Article 5.4 of the WTO Antidumping Agreement which defines how domestic support for the initiation of an investigation is to be determined.

Answer:

Article 4 of the Decree No. 90/2005/ND-CP only clarify what is "major proportion" in the definition of "a domestic industry" provided in Article 5.2 of the AD Ordinance. When the investigation agency appraises the application requesting the imposition of anti-dumping measures under Article 19, it shall check the applicant's status of "on behalf of a domestic industry" in accordance with requirements provided by Article 8.1 of the AD Ordinance as following:

- The investigation shall not be initiated if the volume, quantity or value of goods produced or presented by the applicants is less than 25 per cent of the total volume, quantity or value of the like goods of a domestic industry;
- Organizations or individuals filing the application requesting the imposition of anti-dumping measures shall be regarded as be on behalf of a domestic industry only if they also meet the requirement that their volume, quantity or value of goods must exceed the volume, quantity or value of the like goods of domestic producers who oppose the application requesting the imposition of anti-dumping measures. In other words, the production of producers who support the requests (including the applicant producers) must account for more than 50 per cent total production of the like goods of all the domestic producers who support or oppose the application requesting the imposition of anti-dumping measures.

Thus, those articles are fully compliant with the Article 5.4 of the AD Agreement.

Question 204

Article 31 Preliminary conclusion and Article 28 Imposition of provisional Antidumping Duty: Article 31 states that "Within 90 days as from the date on which the decision to initiation the investigation decisions was made, the investigating Authority shall publicize the preliminary conclusion..."

Please clarify that no decision will be published before 60 days after the initiation of the investigation in accordance with AD Agreement.

Article 7.3. : In addition, please clarify whether there is a difference between the time-frame for the imposition of preliminary measures as outlined in Article 31 and Article 38.1 which notes that "After 60 days as from the date on which the decision to initiate the investigation decisions was made, upon the preliminary conclusion and the recommendation by the investigation Authority, the Ministry of Trade may issue decision to impose provisional antidumping duty.

Is the Decree intended to place an absolute deadline of 90 days to reach a preliminary determination? Please indicate how this provides reasonable opportunities for parties to register, submit their information, receive supplemental questionnaires and defend their interests, in addition to authorities having adequate time to analyze responses?

Answer:

- Article 38.1 of the Decree No. 90/2005/ND-CP provides that only after 60 days as from the date on which the decision on initiation of investigation was made, the Minister of Trade may issue decision to impose provisional anti-dumping duty. This provision is fully compliant with the Article 7.3 of the AD Agreement.

- The 90-day period stated in the Article 31 of the Decree No. 90/2005/ND-CP is the period required for the investigation agency to make a preliminary conclusion. The investigation agency may make a preliminary conclusion in a shorter time than 90 days as from the date on which the decision on initiation of investigation was made. In any case, however, the Minister of Trade may issue decision to impose provisional antidumping duty only after 60 days as from the date on which the decision on initiation of investigation was made.
- In accordance with the Article 31 of the Decree No. 90/2005/ND-CP, within 90 days as from the date on which the decision on initiation of investigation was made, the investigation agency must make public the preliminary conclusions. In special cases, the time limit for publicization of such conclusions may be extended, but not exceed 60 days.

In addition, in the investigation process, related parties have all the rights and duties to supply information relating to the anti-dumping case. They also have the right to require the investigation agency to extend time limits for supplying information or answering questionnaires (Article 15 of the Decree No. 90/2005/ND-CP). If valid reasons are shown to support the extension requirement, in order to fully protect relevant parties, the investigation agency must wait for the parties to supply supplemental information and documents before it makes preliminary conclusions.

Question 205

Article 32 Termination of Investigation: Please describe the types of "appropriate manner" as outlined in Article 32.2 that will be used to notify parties of the termination of an investigation.

If a company is found to have a *de minimis* margin at the investigation, is the investigation against that company terminated and that company excluded from the AD measure and subsequent reviews?

Answer:

Appropriate means provided in the Article 32.2 of the Decree No. 90/2005/ND-CP that shall be used to notify parties of the termination of an investigation may include mailing; faxing; sending through diplomatic agencies (i.e. Viet Nam embassies and consulates in foreign countries); posting in the official website of the Ministry of Trade of Viet Nam. These appropriate means shall be used in combination to ensure the decision on termination of investigation to be informed to all related parties.

According to Article 19.2 of the AD Ordinance, if preliminary conclusions show that the company has a *de minimis* margin, the company shall be excluded from the investigation and therefore not be imposed with anti-dumping measures or subject to any later reviews.

Question 206

Article 33 Definitive conclusion: Please clarify how the "time-frame for handling the case" as noted in Article 33.2 (g) will be different than the time-frame given to interested parties at the onset of the case.

Answer:

"Process for resolving an anti-dumping case" described in Article 33.2 (g) of the Decree No. 90/2005/ND-CP is the process of following steps in resolving the anti-dumping case after final conclusions are made. And the "Process for resolving an antidumping case" notified to parties in the decision on initiation of investigation at the beginning shall be all the steps to handle the case after the decision on initiation of investigation is made.

Question 207

Article 36 Ministerial decision on undertakings to eliminate dumping: Neither Article 36 of the AD Implementing Decree nor Article 21 of the AD Ordinance seem to comply with Article 8.4 of the WTO AD Agreement that "If an undertaking is accepted, the investigation of dumping and injury shall nevertheless be completed if the exporter so desires or the authorities so decide..."

Please clarify that Viet Nam will comply with Article 8.4 of the WTO AD Agreement, in its entirety.

Answer:

Under Article 21 of the AD Ordinance, Undertaking will be determined upon voluntary basis of producers/exporters to whom anti-dumping measures are applicable. After primary investigation decision confirm the existence of dumping, significant injury and the casual link. Based on the acceptance of undertaking, the Ministry of Trade will make a decision on the application of undertaking and suspend the investigation. Further investigation after the decision on investigation suspension will be depend on the implementation of undertaking by producers/exporters in a certain period of time.

In practice, investigation agencies will continue consider and assess undertaking as well as the content of investigation, even after undertaking has been decided. Upon the request of producers/exporters, investigation agency will revise the implementation as regulated in Article 21 or Article 24 of the Ordinance. This provision is not inconsistent with WTO AD Agreement.

As being confirmed at the outset, if there is any difference between the Ordinance or the Decree and the AD Agreement, Viet Nam will apply the Article 8.4 when she becomes a WTO member.

Question 208

Article 40 Imposition of the antidumping duty: Article 40 states, "Where the imposition of antidumping duty causes impairment to public interests, the Minister of Trade may issue a decision rejecting on the imposition of antidumping duty."

If such a decision is made, will the decision published by the Minister of Trade include details as to why the imposition of antidumping duty was rejected?

Answer:

Article 22 of the AD Ordinance and Article 40 of the Decree No. 90/2005/ND-CP state that where the imposition of antidumping duty causes impairment to public interests, the Minister of Trade may issue a decision on rejecting the imposition of anti-dumping duty. There is no requirement for the Minister to give specific reasons for his/her rejection in the decision. Thus, the Minister is free to indicate or not the reasons in the decision. The imposition of the anti-dumping duties will follow principles stated in Article 5 of the AD Ordinance.

Question 209

Article 41 Reimbursement of difference in levies with respect to provisional antidumping duty or amounts deposited to secure the payment of provisional antidumping duty:

Will Viet Nam please clarify the time-frame in which levies will be reimbursed?

Answer:

According to draft Circular of the Ministry of Finance of Viet Nam guiding the receipt, payment and reimbursement of antidumping duty, anti-subsidy duty and amounts deposited to secure the payment, the time-frame in which levies will be reimbursed is expected to be 15 days as from the day Custom agency receives full application for reimbursement of a company.

Question 210

Reviews of antidumping duties: While the AD Implementing Decree does not address reviews of antidumping duties, please confirm that the AD Ordinance will refer to the AD Implementing Decree to ensure complete transparency with regards to reviews.

Will reviews be conducted along the same procedure as an antidumping investigation?

Answer:

The Decree No. 90/2005/ND-CP addresses only unclear provisions of the AD Ordinance. Articles 24 and 25 of the Ordinance clearly describe reviews of anti-dumping measures. The review must comply with all the provisions of the Ordinance and relevant provisions provided by the Decree.

Article 24.3 of the AD Ordinance states that the investigation agency will review the imposition of antidumping measures in accordance with Articles 9, 10, 11, 12, 13, 14 and 15 of the Ordinance. Therefore, reviews shall be conducted along the same procedure as an anti-dumping investigation

B. EXPORT REGULATION

- **Customs tariffs, fees, and charges for services rendered, application of internal taxes to export**

Question 211

Paragraph 221: Viet Nam's argument that export taxes on ferrous and non-ferrous scrap have no effect on world scrap prices misses the point. Export duties of 35 to 45 per cent lower the domestic price of scrap (in Viet Nam) by that percentage relative to the world price. Such a price differential provides a huge benefit to scrap users in Viet Nam, relative to users outside Viet Nam. Therefore, we remain concerned about the export duties imposed on ferrous and non-ferrous scrap exports. We request that Viet Nam eliminate the export duties imposed on ferrous and non-ferrous scrap exports by the date of accession.

Answer:

In our view, export customs tariff is not inconsistent with WTO provision.

We agree with the commitment language in paragraph 224 in WT/ACC/SPEC/VNM/5/Rev.1 dated 5 September 2005 and agree to remove the brackets of this paragraph.

Question 212

We note the competing commitment language in paragraphs 223 and 224. We support the bracketed text in paragraph 223 as the sounder basis for a commitment.

Answer:

Regarding paragraph 223 in WT/ACC/SPEC/VNM/5/Rev.1 dated 5 September 2005, this proposed language is not appropriate given the fact that a large number of the WTO are still applying export duties. Therefore, we propose that it be deleted from the Draft Report.

- **Export restrictions**

Question 213

Paragraph 221 and Question 104 of WT/ACC/VNM/38: Export duties on scrap, we appreciate the explanations of Viet Nam on the rationale of the export duties imposed on ferrous and non-ferrous scrap. However, we remain concerned as regards the effect of these measures and request that Viet Nam eliminates the export duties imposed on ferrous and non-ferrous scrap upon accession.

We agree with the commitment language proposed for paragraph 223 and would like to see the brackets removed from it.

Answer:

In our view, export customs tariff is not inconsistent with WTO provision. We agree with the commitment language in paragraph 224 in WT/ACC/SPEC/VNM/5/Rev.1 and agree to remove the brackets of this paragraph.

Regarding paragraph 223 in WT/ACC/SPEC/VNM/5/Rev.1 dated 5 September 2005, this proposed language is not appropriate given the fact that a large number of the WTO are still applying export duties. Therefore, propose that it be deleted from the Draft Report.

- **Export subsidies**

Question 214

Paragraphs 243, 244 and Question 106 of WT/ACC/VNM/38, we welcome the announcement of Viet Nam that it will eliminate upon accession subsidies in the form of direct payments contingent on export performance.

Viet Nam now seeks a transitional period of seven years to eliminate remaining prohibited subsidies (mainly subsidies in the form of investment incentives). Even if the request for a transitional period has been reduced for former 9 to 7 years, a transition period cannot be considered acceptable, since the exemptions in the Agreement on Subsidies and Countervailing measures concerning prohibited subsidies do not apply to Viet Nam. We therefore urge Viet Nam to eliminate all prohibited subsidies contingent on export performance upon accession.

We urge Viet Nam to eliminate all prohibited subsidies contingent on export performance upon accession. We would also request Viet Nam to provide an updated list of all subsidies/subsidy programmes granted. The list should take into account the draft Law on Investment, and possible other updated legal provisions, and indicate the approximate value of incentives provided under each scheme per annum. The latest document WT/ACC/VNM/13/Add.2 covers only period (2001-2002).

Answer:

The notification of industrial subsidies is being updated for the 2003-2004 period, taking into account of the recent changes with respect to the investment incentives of Viet Nam, and will be submitted to the Working Party. The new notification will include all the available information on each subsidy program applied by Viet Nam.

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

- (i) Subsidies contingent upon localization ratios and the use of domestic over imported goods shall be eliminated upon accession to the WTO;
- (ii) Subsidies in the form of direct payment from the State budget contingent upon export performance shall be eliminated upon accession to the WTO; and
- (iii) Concerning the remaining prohibited subsidies (mainly subsidies in the form of investment incentives), Viet Nam has revised its draft Law on Investment to eliminate the practice of granting these subsidies from the date when the new rules become effective (i.e. 1 July 2006 if so approved by the National Assembly). Additionally, Viet Nam shall eliminate the prohibited subsidies in the form of investment incentives for the licensed projects no later than seven years from the date of Viet Nam's accession to the WTO in order to observe its commitments with the existing investors and stabilize the business environment. The detailed information on the subsidies programs and the schedule for elimination of the prohibited subsidies shall be elaborated in the updated notification on industrial subsidies.

C. INTERNAL POLICIES AFFECTING FOREIGN TRADE IN GOODS

- Industrial policy, including subsidies

Question 215

Paragraphs 251 and 252, we welcome Viet Nam commitment to eliminate subsidies contingent on localisation ratios and the use of domestic over imported goods upon accession.

However, a number of programmes notified as industrial subsidies appeared to be contingent on export performance. Such prohibited subsidies should be eliminated upon accession.

Answer:

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

- (i) Subsidies contingent upon localization ratios and the use of domestic over imported goods shall be eliminated upon accession to the WTO;
- (ii) Subsidies in the form of direct payment from the State budget contingent upon export performance shall be eliminated upon accession to the WTO; and
- (iii) Concerning the remaining prohibited subsidies (mainly subsidies in the form of investment incentives), Viet Nam has revised its draft Law on Investment to eliminate the practice of granting these subsidies from the date when the new rules become effective (i.e. 1 July 2006 if so approved by the National Assembly). Additionally, Viet Nam shall eliminate the prohibited subsidies in the form of investment incentives for the licensed projects no later than seven years from the date of Viet Nam's accession to the WTO in order to observe its commitments with the existing investors and stabilize the business environment. The detailed information on the subsidies programs and the schedule for elimination of the prohibited subsidies shall be elaborated in the updated notification on industrial subsidies.

Question 216

Prohibited subsidies (Article 3 of the Agreement on Subsidies and Countervailing Measures), we renew our support expressed at the Working Party in December 2004 to Viet Nam's inclusion under Annex VII of the Agreement on Subsidies and Countervailing Measures (ASCM), due to its per capita GDP of less than 1,000 US\$.

Answer:

We would like to thank for the comment and ask for the view to be reflected in the Draft Report.

Question 217

As we did in the Working Party on 15 September, we wish to alert that there is an error in the second sentence of the commitment paragraph 245 in the phrase "...mainly subsidies in the form of investment incentives, ...", because it confuses investment incentives as if they were also prohibited by Article 3 of the ASMC. Accordingly, if this sentence is to be accepted, this phrase must be eliminated. The same request applies to paragraph 252 on subsidies.

Answer:

We thank for the comment. The relevant commitment sentence should be read in full as follows:

"Viet Nam commits to eliminate the remaining export subsidies prohibited within the meaning of Article 3 of ASCM, which are mainly in the form of investment incentives, within seven years from the date of accession."

Question 218

As to clarify the situation in respect of agricultural export subsidies in the second sentence of paragraph 245 following final phrase has to be added:

"...without prejudice to elimination commitments in agricultural export subsidies in paragraph 330."

Answer:

We thank for the comment and agree with this change to the text of the Draft Report.

Question 219

Actionable subsidies (internal policy, including subsidies, paragraphs 246-252), we wish to note that the commitment in paragraph 252, is not correct and needs redrafting, because it refers to prohibited subsidies, while the subsidies in this section are actionable.

Answer:

We thank for the comment and note that the Working Party has agreed that some redrafting is needed in this section.

Question 220

In the interest of greater clarity, we recommend that sections entitled export subsidies and industrial policy, including subsidies be merged.

Answer:

We do not oppose to the suggestion.

Question 221

We look forward to Viet Nam's update of its subsidies notification. This will help the Working Party's evaluation of Viet Nam's subsidy programs and its commitments regarding them.

Answer:

The notification of industrial subsidies is being updated and will be submitted to the Working Party.

Question 222

Referring to paragraph 34 of the draft Working Party Report, the government grants import duty exemptions and/or duty drawback on machinery and equipment imports. Annexes I and II of the WTO Agreement on Subsidies and Countervailing Measures ("SCM Agreement") limit duty remission and rebate schemes to "inputs that are consumed in the production of the exported product (making normal allowance for waste)." Footnote 61 of the SCM Agreement provides an exhaustive list of those inputs.

- **Please explain how Viet Nam's duty exemptions or rebates on imports of machinery and equipment are consistent with Annex II of the SCM Agreement.**
- **Please confirm that upon accession, Viet Nam's import duty exemption and drawback practices will fully conform to the requirements of Annexes I and II of the SCM Agreement.**

Answer:

Exempt and drawback customs duties on imported material for producing exports:

- Annex II allows applying these measures provided that tariff exemption or drawback do not exceed the corresponding tax or tariff imposed on inputs for exports; and
- Meanwhile Viet Nam's provisions on tariff exemption or drawback for machinery equipment imported is equal to the exact amount of tariff that should be submitted. Thus, this provision is not inconsistent with Annex II of the Subsidy and Countervailing Agreement.

Exempt VAT and customs duties on machinery equipment imported for fixed asset purposes by FDI enterprises: This is Viet Nam's policy on encouraging FDI enterprises to invest and make production in Viet Nam. This provision favors FDI enterprises more than domestic enterprises and is not inconsistent the national treatment principle.

Under the Law on Import - Export Duties, exemption of import duties with respect to machinery, equipment imported under Paragraph 34 is applied to all domestic and foreign investment projects that fall into the list of sectors in which investment is encouraged. On the other hand, according to the 16th draft Investment Law, projects producing exporting goods are not included in the list of sectors in which investment is encouraged. Therefore, machinery and equipment set out in paragraph 34 are

not "inputs that are consumed in the production of the exported product (making allowance for waste)" as set out in Annexes I and II of the SCM Agreement.

Viet Nam confirm that upon accession, Viet Nam's import duty exemption and drawback will fully conform to the requirements of Annexes I and II of the SCM Agreement.

Question 223

Paragraph 245: We appreciate Viet Nam's commitment to eliminate prohibited subsidies in the form of direct payment contingent upon export performance and export ratio requirements by accession. Viet Nam also states that incentives provided under Viet Nam's new investment law will be in full conformity with WTO rules and requirements. Our review of Viet Nam's draft Investment Law (No. 2005-QH11 Draft 13), indicates that several provisions, e.g. Article 28, include incentives that are contingent on export. (Please see the separate paper containing our comments on the draft investment law at the end of this document).

Prior to accession, Viet Nam must modify all provision of its draft Investment Law to make them consistent with Articles 3.1(a) and 3.1(b) of the SCM Agreement.

Answer:

The Member has commented on the 13th draft Investment Law, while the 16th draft has removed all prohibited subsidies under Articles 3.1 (a) and 3.1 (b) of the SCM Agreement.

Viet Nam undertakes not to issue legal instruments containing prohibited subsidies under Articles 3.1 (a) and 3.1 (b) of the SCM Agreement. The elimination of the prohibited subsidies contingent export and local content under the above-mentioned Article has been reflected in the 16th draft Investment Law and Corporate Income Tax Law (as amended), and will be guided/amended in the implementing decrees of these laws.

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

- (i) Subsidies contingent upon localization ratios and the use of domestic over imported goods shall be eliminated upon accession to the WTO;
- (ii) Subsidies in the form of direct payment from the State budget contingent upon export performance shall be eliminated upon of accession to the WTO; and
- (iii) Concerning the remaining prohibited subsidies (mainly subsidies in the form of investment incentives), Viet Nam has revised its draft Law on Investment to eliminate the practice of granting these subsidies from the date when the new rules become effective (i.e. 1 July 2006 if so approved by the National Assembly). Additionally, Viet Nam shall eliminate the prohibited subsidies in the form of investment incentives for the licensed projects no later than seven years from the date of Viet Nam's accession to the WTO in order to observe its commitments with the existing investors and stabilize the business environment. The detailed information on the subsidies programs and the schedule for elimination of the prohibited subsidies shall be elaborated in the updated notification on industrial subsidies.

Question 224

We remain interested in receiving information about how subsidies contingent upon export performance will be eliminated, e.g. will the government introduce legislation in the near term? Can these measures be eliminated by administrative decree?

Answer:

Viet Nam committed to eliminate subsidies in the form of direct payments contingent upon export performance from the date of accession. Viet Nam will repeal or revise the legislation providing for such subsidies.

Question 225

Each of the elements of certain subsidy programs notified by Viet Nam and described below is inconsistent with either Articles 3(a) or (b) of the SCM Agreement. [Note: Taken *verbatim* from Viet Nam's Article 25 Subsidy Notification (WT/ACC/VNM/13/Add.2).]

Subsidy Program Elements that Appear Inconsistent with Article 3(a)

III. Investment Incentives For Domestic Enterprises Operating In Viet Nam

"Investors producing goods for export and/or exporting goods are granted corporate income tax exemption for the amount of income earned by export in the financial year for investment projects in areas falling under the List of areas of specially difficult socio-economical conditions; 20 per cent - 50 per cent reduction of corporate income tax on the amount of income earned from export to new markets, new export products, and in the case of higher export volume as compared with the previous year, export turnover accounting for more than 50 per cent of total turnover."

IV. Investment Incentives For Foreign-Owned Enterprises

"Preferential corporate income tax rates of 20 per cent, 15 per cent, 10 per cent (normal tax rate is 25 per cent), an exemption of corporate income tax for the period from 1 to 4 years and a 50 per cent reduction for the period from 2 to 4 subsequent years are applied to the following investors:

**Enterprises operating in service sector and located in export processing zones;
Enterprises located in industrial zones exporting more than 50 per cent of their products;
Enterprises building and operating infrastructure facilities of industrial zones, export processing zones and high-tech zones; export processing enterprises."**

V. Incentives In Development Investment Loan

"Eligibility: Production and processing projects in export oriented sectors; agricultural production such as planting of perennial trees, cattle and aqua-culture breeding, salt production, development of processing industry."

VI. Support For Development Of Textile and Clothing Sectors

"...are allowed to borrow development investment loan from the Development Assistance Fund, 50 per cent of the value of which is subject to the interest rate of 3 per cent/year for the period of 12 years with three years of grace period; the remaining 50 per cent is subject to the interest rate of 5.4 per cent/year."

Note: It is our understanding that the Development Assistance Funds provides incentives contingent upon exportations such as short-term loans.

VIII. Export Promotion

"Policy objectives and/or purposes of the subsidy: To promote exports, especially agricultural products and those produced in rural areas."

X. Trade Promotion Support

"Policy objectives and/or purposes of the subsidy: To enhance market development and trade promotion activities for export."

XV. Assistance To Enterprises Facing Difficulties Due To Objective Reasons

"Policy objectives and/or purposes of the subsidy: To assist enterprises facing difficulties due to objective reasons to recover trade and production capacity."

XVI. Investment Incentives For Science and Technology Projects

"Import duty incentives: exemption of import duty on imported machinery, equipment, materials, scientific and technological equipment with automatic control devices, experimental samples, measurement and experimental devices directly used in R&D projects and contracts."

"Credit incentives: Enterprises operating under the Law on Domestic Investment Promotion (as amended) can borrow medium and long-term loans which can satisfy up to 70 per cent of their projects' investment capital at preferential interest rate from the Development Assistance Fund, Export Promotion Fund and Science and Technology Development Assistance Fund."

Subsidy Program Elements that Appear Inconsistent with Article 3(b)

I. Preferential Import Tariff Rates Contingent Upon Localization 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

We acknowledge and appreciate Viet Nam's willingness to discuss our concerns with the above listed subsidy programs. These programs provide subsidies contingent on export or the use of domestically produced goods over imports, which are prohibited under Articles 3.1 (a) and (b) of the SCM Agreement. Viet Nam must therefore bring these subsidy programs in conformity with Articles 3 (a) and (b) on or before the date of accession. Furthermore, Viet Nam must undertake a commitment not to grandfather or reintroduce benefits granted under these programs and not establish new subsidy programs that are inconsistent with either Article 3(a) or (b) of the SCM Agreement.

Answer:

These programs will be reviewed in light of the new and updated industrial subsidies notification that Viet Nam will submit to the Working Party. Viet Nam is willing to discuss the contents of each program as well as commitments with respect to the prohibited subsidies.

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

Question 226

Table 12 of the revised draft Working Party report lists goods subject to line management measures. The justification for certain of these measures includes "TBT requirement" and "TBT requirement/Technical Standards Conformity Test". We would appreciate advice on why it is necessary for government agencies to be involved in the inspection for quality/conformity testing of imported goods.

Answer:

Many government agencies have invested many resources to set and operate testing facilities to support enterprises, especially small and medium ones of which many do not have testing facilities, in testing and/or evaluation of their products for many purposes, including quality/conformity testing of imported goods. Even though these testing facilities belong to government agencies, they are responsible for their works on basis of impartiality and they are financially independent.

Question 227

We welcome Viet Nam's confirmation in the recent Working Party meeting that "line management" entailed management of TBT, SPS and licensing measures by "line" agencies within Viet Nam's system and not the application of any additional limitations above those TBT/SPS measures on terms and conditions or quantity of imports. While we welcome Viet Nam's statement in the Working Party report that these measures do not "aim" to restrict quantities of imports or exports, we seek a clear commitment language in this section to indicate that this is the case. In particular we would suggest the inclusion of the following language for paragraph 195:

"He confirmed that under Viet Nam's legislative system, "line management" was defined only as administrative oversight by line Government agencies of measures consistent with Agreements on SPS, TBT and import licensing procedures. He confirmed that under Viet Nam's regulations, in particular Decision No. 46/2001 ..., line management measures could not constitute quantitative import restrictions, or be administered in such a way to have any trade-restrictive or distortive effects."

Answer:

Viet Nam agrees with the above-mentioned recommendation with some small changes as follows:

"He confirmed that under Viet Nam's legislative system, "line management" was defined only as administrative oversight by line Government agencies of measures consistent with WTO's rules in particular those on SPS, TBT and import licensing procedures. He confirmed that under Viet Nam's regulations, in particular Decision No. 46/2001/QD-TTg, line management measures could not constitute quantitative import restrictions, or be administered in such a way to have any trade-restrictive or distortive effects."

Question 228

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

Answer:

The lists will be submitted after being amended and promulgated.

Question 229

We thank Viet Nam for the information given. We would however have the following comments as regards different legislative instruments:

- **Circular 37/2001/TTLT customs procedures:**

As a general remark, we think that mandatory certification is not the right track to follow.

- **General provisions:**

As regards Point 2 paragraph 2 concerning the registration of "goods owners for inspection with the agency in charge of the State quality inspection", could Viet Nam clarify the situation regarding importers and imported goods? How this registration takes place?

Point 5 paragraph 2: could Viet Nam confirm whether the CE mark is a recognized "standards conformity stamp" and if not if it could become one?

Point 7, last paragraph: If we understand correctly, imported goods processed by Vietnamese enterprises for foreign traders do not require state quality inspection. Could you explain the situation as regards these goods? What is the situation as regards foreign enterprises processing imported goods

Answer:

We would like to thank for the comments and questions on TBT issues.

Relating to customs procedures described in Circular No. 37/2001/TTLT, Viet Nam would like to clarify as follows:

- Point 1 of General Provisions: registration of "goods owners for inspection with the agency in charge of the State quality inspection" means that when goods is arriving at the port of entry, goods owners apply for quality inspection with the State quality inspection agency. After that, the goods owner presents inspection registration paper given by the State quality inspection agency to Customs for clearance of goods on quality issue.
- Point 5 of General Provisions: the CE mark may be a recognized as "standards conformity stamp" if Viet Nam and the importing country have signed a mutual recognition arrangement on conformity assessment results.
- Point 7 of General Provisions: The sentence mentioned "Goods processed by Vietnamese enterprises for foreign traders" means that foreign traders outside of Viet Nam place an order to Vietnamese enterprises to process goods for re-exporting out of Viet Nam. In that case, processed goods do not require state quality inspection.

Question 230

Decision No. 114/2005 Network and enquiry point:

- **Article 3: We note that the delay between adoption and implementation is too short (15 days), TBT rules provide a 6-month period.**

Regulation on Network and Enquiry point

- **Article 2 paragraph 1: We note that the notification should always be made before adoption of the technical regulation, conformity assessment procedure and standard.**
- **Article 4 paragraph 1 c): We note that the time limit of 60 days before promulgation is not the current requirement under the TBT Committee, where the notification should open a period of 3 months for comments, give time to make possible changes and then adopt the regulation. The same comment applies also to Article 5 paragraph 1 b) and Article 8 paragraph 1 b).**
- **Article 10 paragraph 1: As regards the function of the TBT office, the wording should not state "notifying Viet Nam's Technical barriers to trade", as this gives the impression that the office creates barriers on purpose. We would propose the following wording: "notifying technical regulations, conformity assessment procedures and standards that will have an impact on trade for other WTO Members"**

Answer:

Article 3 of this Decision: the time of 15 days between publication in the Official Gazette and implementation is set by the Law on Promulgation of Legal Normative Documents. For technical regulations, the proposed Ordinance on Standardization, available through WT/ACC/VNM/41/Add.1, has taken into account the delay of 6 months between adoption and implementation.

Article 4: the time-limit of 60 days before promulgation of technical regulation is referred in a booklet by the WTO Secretariat April 2002 on Transparency Provisions of the TBT Agreement and the Report of the Fourth Special Meeting on Procedures for Information Exchange, 2-3 November 2004.

We understand this time is "at least" and TBT Committee encourages the Members to provide a time-limit of more than 60 days, such as 90 days. We would appreciate any information relating to the latest requirements of TBT Committee on this issue.

Article 10: Viet Nam would like to thank for the comment. We will take this into account for the first revision of this Decision.

Question 231

Decision No. 444/2005 implementation of TBT Agreement:

Article 1 point 2 - Specific tasks: Could Viet Nam clarify what are the tasks referred to in this provision and who should perform these tasks?

Article 2 paragraph 1 a): Could Viet Nam provide more information on meeting the deadline?

Article 2 paragraph 1 b): It is proposed to delete the reference to regional standards and only keep the reference to international standards.

Could Viet Nam explain what are branch standards? Are they harmonised with international standards?

Same Article c) paragraph 4, the TBT Agreement stipulates on mutual recognition of test results or conformity assessment results. It does not state that Mutual recognition Agreements on standards should be taken over from international standards.

Answer:

Article 1 point 2: Special tasks mentioned in this article are performed by bodies mentioned in Article 2. "Implementation measures and timetable" and also clarified in other articles of this Decision such as Articles 3, 4 and 5.

Article 2 paragraph 1 a): To review technical regulations in order to meet the requirements of the TBT Agreement, ministries and local authorities have actively carried out the task.. As a result, technical regulations have met or are scheduled to be revised to meet the requirements of TBT Agreements such as non-discrimination, not creating unnecessary obstacles to trade and transparency no later than the date of WTO accession.

Article 2 paragraph 1 b): Branch standards (TCN) are standards developed by other line ministries while national standards (TCVN) are those approved by the Ministry of Science and Technology. Branch standards in many cases are based on foreign, regional and international standards, while TCVNs are mostly based on international standards. In some rare instances, they could also be regional (for example, EN) or foreign (for example, ASTM).

Question 232

Decision No. 2424/2000 Temporary regulations:

Could Viet Nam explain why are temporary regulations needed?

In the actual Text: Article 1.3: Could Viet Nam submit a list of goods subject to mandatory certification?

Article 3: Could Viet Nam clarify who are the authorities implementing this decision?

Article 3.2.2 c): Could Viet Nam explain what is meant with "supervision and continuous conformity assurance plan after the declaration"

Article 5.1: What is the selection criteria of these agencies

Article 5.3: Could Viet Nam explain how do the Provincial Departments function? How many are they and under which Authority are they functioning?

Answer:

This Decision is temporary regulations because at that time a governmental decree guiding the Ordinance on Goods Quality had not been issued. These temporary regulations will become formal Regulations after revision as already planned for in this year.

Article 1.3: A list of goods subject to mandatory certification is under development. It will be provided once promulgated.

Article 3: Declaration of conformity with standard(s) is a responsibility of suppliers. This is defined in ISO/IEC Guide 22. Independent certification bodies and testing laboratories support suppliers in confidence to make their declaration. The authorities that are responsible for market surveillance carry out post-market surveillance over goods, including the goods declared.

Article 3.2.2 c): "supervision and continuous conformity assurance plan after the declaration" is a plan of supplier in order to assure goods manufactured after the declaration will continue to be in conformity with standards as the declared ones.

Article 5.1: These agencies are those who have a responsibility to control, supervise goods circulating in the market. This responsibility is indicated in their Charter.

Article 5.3: There is a Provincial Department in each province of Viet Nam. Their main responsibility is to supervise over goods quality in general in province they belong to.

The procedures for dealing with complaints and appeals on declaration are regulated by the Law on Complaints and Denunciations and the Ordinance on Procedures for Settlement of Administrative Disputes.

Question 233

- (i) Technical Regulations, Paragraph 260: Please clarify in the text the international standards applicable.**
- (ii) Safety certification of products, paragraph 261: Please submit the list to be issued.**
- (iii) Mandatory Quality Inspection, paragraph 262: Please submit the list of products to be issued.**

Answer:

- (i) Most Viet Nam's national standards mentioned in paragraph 260 of the Draft Report to which goods should be conformed are aligned with the relevant international standards.
- (ii) The list will be submitted after being promulgated.
- (iii) The list will be submitted after being promulgated.

Question 234

Paragraph 266: We note and support Viet Nam's commitment to apply the WTO Agreement on Technical Barriers to Trade from the date of accession without recourse to any transition period.

Answer:

We would like to thank for the comment.

Question 235

We again request that a copy of the Ordinance on Standardization be made available to the Working Party at the earliest possible date.

Answer:

We would like to attach herewith the latest draft of the Ordinance on Standardization, available through WT/ACC/VNM/41/Add.1, (as of August 2005).

Relating to the Ordinance on Standardization, the draft of the Ordinance was submitted by the Government to the National Assembly's Standing Committee in August 2005. Taking into account the importance of promulgation and implementation of this legal document, the National Assembly has decided to upgrade this Ordinance to the Law on Standardization (by the Resolution in October 2005). The content of this Law is mainly based on the content of the draft Ordinance submitted by the Government in August 2005. As the procedures to promulgate a law are much more complicated than those to promulgate an ordinance, in particular regarding the collection of comments and voting at a formal session of the National Assembly, the adoption of this law is re-scheduled for the first half of 2006.

Question 236

Paragraph 260: We would appreciate a fuller description of Viet Nam's conformity assurance processes. In particular, we would appreciate receiving as soon as possible a copy of the proposed implementing decree to revise list of products subject to mandatory procedures and the anticipated Prime Minister's decision to create a National Accreditation Council.

Answer:

Relating to a fuller description of Viet Nam's conformity assurance processes, Viet Nam would like to provide a copy of the Decree No. 179/2004/ND-CP dated 21 October 2004 guiding the Ordinance on Goods Quality 1999. This Decree describes all schemes of conformity assurance in Viet Nam. The revision list of products subject to mandatory procedures and the anticipated Prime Minister decision to create a National Accreditation Council were prepared by the Ministry of Science and Technology and submitted to the Prime Minister for consideration and approval. It will be provided right after being promulgated.

Question 237

In response to previous questions, Viet Nam has clarified that standards can become mandatory if they are specified in a regulation. It has also clarified various legal instruments, which guide the government in ensuring transparency. It remains unclear, however, whether Viet Nam publishes notice of its intention to make a standard (previously approved by a technical committee), or elements of it, mandatory and allows an opportunity for comment before it is adopted as a technical regulation. If this is the practice, we seek confirmation of this in the draft Working Party Report text.

Answer:

This will be undertaken through the implementation of electronic Official Gazette operated by the Government Office. Additional information concerned will be appeared in paragraph 259 of Draft Report of 5 September 2005. In line 9 from the top of paragraph 259 the sentence "Notice of proposed technical regulations, for that purpose, published in the Appendix of the Official Gazette by decision of the competent State bodies" will be replaced by:

"Notice of proposed technical regulations, including those based on standard(s) or elements thereof, would be, for that purpose, published in the Appendix of the Official Gazette and/or the Electronic Official Gazette by decision of the competent State bodies"

- **Sanitary and phytosanitary measures**

Question 238

We appreciate information Viet Nam has supplied on line management measures within the purview of the SPS Agreement. We note the list of goods subject to SPS measures applied by the Ministry of Fisheries. Can Viet Nam indicate the principles it uses to assess whether items should be permitted for import or not, whether this undertaken on the basis of an appropriate scientific risk assessment, and whether SPS measures are based on relevant international standards? Pending Viet Nam's response we would look to draft additions to commitment language to ensure that SPS measures applied under the purview of line management would be subject to all relevant disciplines of the SPS Agreement.

Answer:

In the fishery sector, principles Viet Nam uses to assess whether items should be permitted for import or not are based on international standards, details are as below:

- The producing country permits to produce, domestically circulate and export the item;
- Viet Nam applies the risk assessment principle when approving the import of an item. Therefore, for an item (example: veterinary drug, feeding stuffs, new products for aquaculture environment treatment; alien aquatic animals; aquatic animals and the products thereof from the region/ country where the disease is existing...) that has the possible of harming human, animal, plant health and the environment of Viet Nam, the importer must show the scientific evidence (may be through researches and experiments...) demonstrating that the item does not have the above-mentioned harm. Viet Nam would build up SPS measures applied under the purview of line management based on relevant principles of the SPS Agreement.

Question 239

"273. Viet Nam was a Member of Codex, FAO and IOE and had become a contracting member of the International Plant Protection Convention (IPPC) in February 2005. Viet Nam's national standards were based on those provided by Codex, IPPC, OIE and FAO/WHO, or based on regional or developed countries' standards. In his view, Viet Nam's veterinary standards and inspection measures were consistent with regulations of international organizations such as CODEX, OIE, and ASEAN. As of November 2004, 50 per cent of Viet Nam's national standards (TCVN) relating to food and foodstuffs conformed to ISO, CODEX, international or regional standards. He added that Viet Nam was planning to adjust its remaining standards to international and regional standards, with due regard to the conditions prevailing in Viet Nam. He noted that an Ordinance on Standardization providing detailed guidelines for adopting standards, guidelines or recommendations set out by international organizations, including those in the SPS area, was being prepared. The Ordinance was expected to be adopted prior to Viet Nam's accession to the WTO. In the meantime, Viet Nam would make its best efforts to apply SPS measures based on standards, guidance and recommendations of international organizations. "

Rationale: Only standards of the three standard setting organizations recognized by the SPS Agreement (Codex Alimentarius Commission, OIE and IPPC) are relevant.

Answer:

We agree to delete accordingly.

Question 240

Paragraph 268: Grateful for an update from Viet Nam on whether any progress has been made on performing risk assessments for SPS purposes (particularly regarding their search for technical assistance to address shortcomings of their current system).

Answer:

Paragraph 268: Viet Nam is now in the beginning stage to perform risk assessment. In order to perform risk assessment, Viet Nam looks forward to receiving technical assistance from other WTO members and international organizations for following activities:

- Training staffs in risk assessment of biological and chemical factors in food, animal disease and pest risk;
- Elaborating guidelines for risk assessment procedures in Viet Nam; and
- Setting up the necessary facilities (equipment, database, methods of risk assessment).

Question 241

Paragraph 270: Grateful if Viet Nam could clarify what processes Viet Nam has or will put in place to enable the recognition of measures of other Members as equivalent when they meet the appropriate level of protection to that required by Viet Nam.

Answer:

Paragraph 270: The process applied in order to recognize measures of other Members when they meet Viet Nam's appropriate level of protection, is based on the following steps:

- Requiring other member to provide the complete SPS measures and the references to basis for setting up these measures;
- Evaluating these measures (Viet Nam may require other countries to provide additional explanations if necessary);
- Conducting on-site investigation for verifying these measures implementation in other country if necessary; and
- Organizing bilateral negotiations to enable mutual recognition.

Viet Nam will develop more concrete equivalent recognition procedure for SPS measures of other Members in coming time and looks forward to receiving technical assistance from WTO Members.

Question 242

Paragraph 273: Grateful if Viet Nam could provide an update on the progress of the "Ordinance on Standardization", intended to provide guidelines for adopting standards, guidelines or recommendations set out by international organizations, including those in the SPS area. When exactly is this going to be adopted?

Answer:

Relating to the Ordinance on Standardization, the draft of the Ordinance was submitted by the Government to the National Assembly's Standing Committee in August 2005. Taking into account the importance of promulgation and implementation of this legal document, the National Assembly has decided to upgrade this Ordinance to the Law on Standardization (by the Resolution in October 2005). The content of this Law is mainly based on the content of the draft Ordinance submitted by the Government in August 2005. As the procedures to promulgate a law are much more complicated than those to promulgate an ordinance, in particular regarding the collection of comments and voting at a formal session of the National Assembly, the adoption of this law is re-scheduled for the first half of 2006.

Question 243

Paragraph 277: Grateful for an update on Viet Nam's commitment to amend Viet Nam's SPS requirements for poultry to ensure conformity with the SPS Agreement.

Answer:

Paragraph 277: Veterinary hygiene requirements of poultry are based on the regulations of the Decree No. 33/2005/CP-ND (Articles 38, 39,40 and 41). It is required that:

- Animals intended for slaughter or preliminary processing must satisfy veterinary hygiene standards, and have been quarantined by the competent professional State veterinary administration agency and a certificate has been granted; and
- The slaughter or preliminary processing of animals and/or products of animal origin shall be carried out at premises for slaughter and/or preliminary processing of animals and products of animal origin and inspection prior to, during the process and after slaughter or preliminary processing shall be applied by the competent professional State veterinary administration agency.

The above requirements are applied to both domestic and imported poultry. All slaughters of poultry in Viet Nam are subject to these requirements.

Question 244

Paragraph 278: Could Viet Nam provide greater precision on how it intends to ensure that its phytosanitary measures are consistent with the SPS Agreement, given the lack of product-specific international standards, guidelines and recommendations in the plant health area, and the difficulty it faces with conducting pest risk analyses?

Answer:

Paragraph 278: Viet Nam is developing its national standards that are harmonized with ISPMs in order to meet appropriate level for protection of SPS Agreement. Viet Nam is facing difficulties in conducting pest risk analysis such as lack of PRA consultants, phytosanitary data base, relevant information and budget for implementation and would appreciate assistance in this respect.

Question 245

Paragraphs 286-287: We support these commitments by Viet Nam and request that the brackets be removed from these paragraphs.

Answer:

Paragraph 286-287: The two paragraphs are overlapping. We agree to remove the brackets in paragraph 287. Paragraph 286 can be deleted as paragraph 287 has been adequate.

Question 246

Paragraph 338: Grateful if Viet Nam could provide further details on their quarantine requirements and quarantine certificates applied for health protection purposes (to prevent the spread of infectious diseases in the aqua-culture industry).

Answer:

All regulations on Quarantine and Licence which are applied for human and animal health purposes are introduced in the Ordinance on Veterinary of 2004 and specified in the Decree No. 33/2005/ND-CP guiding the Ordinance and Quarantine Direction (2596/CLTY-TY) for NAFIQUAVED. The main contents are as follows:

(i) Quarantine of imports:

- Be applied for the import of fresh fish, fresh fish products, frozen and chilled fish products, semi-dried fish products;
- Fish and fish products must be quarantined and certified by the competent authorities of the exporting countries to prove that the exported products are free from diseases which are listed in OIE Concern as well as meet the requirements of Quarantine Certification Form of World Organization for Animal Health (OIE) in the line with Aquatic Animal Health Code; and
- When the goods reach the national port, the Quarantine Authority will consider the documents, the status of animal health as well as sanitary. If the documents are regular, and the animal is healthy, they will be separated in order to re-check for disease. If there is no metamorphism, the products will be allowed into the market. In case of metamorphism because of diseased animal, the products will be immediately separated. If the animal is infected with any disease, it will be returned to exporting country or destroyed.

(ii) Quarantine of exports: Conforming to the Regulations of OIE and the requirements of the importing country.

(iii) Quarantine Licensing: Viet Nam regulates the Quarantine Certification on Export and Import Aqua-products in accordance with the requirements of the Quarantine Certification Form of OIE and in the line with the Aquatic Animal Health Code.

Question 247

We are pleased to have the opportunity to provide comments and questions on Viet Nam's implementing efforts related to its obligations under the WTO's SPS Agreement. We are impressed with the progress that Viet Nam has made thus far, and with Viet Nam's determination to take the necessary steps needed to move forward. One of the most important steps will be to ensure that the enquiry point established has the authority to work effectively with both government ministries and the private sector to provide prompt responses to specific enquiries and to avoid the significant problems that can occur if information is not provided on a timely basis. Timely provision of information is critical for a demonstration of a fully functioning and capable SPS Enquiry Point. Viet Nam's Enquiry Point should begin submitting

notifications of SPS measures for comment to the WTO Secretariat upon accession. If Viet Nam's SPS Enquiry Point would like to submit notifications beforehand, we will recognize such efforts and would be glad to work with Viet Nam's SPS Enquiry Point regarding notification preparation.

Another key indicator of progress will be the near-term establishment of a transparent process for the development of SPS regulatory actions. Currently, there is still not sufficient clarity, and Viet Nam should put in place, on a priority basis, a demonstrably open process for the promulgation of new SPS measures such as an official journal that publishes measures while they are in the draft stage. This should allow for and take into consideration comments from all interested parties. In this way, WTO Members can assess Viet Nam's sincerity in implementing its obligations. In order to demonstrate that Viet Nam is prepared to fulfil its future WTO membership responsibilities, a transparent process for the development of SPS regulations should be in place and operating by mid-November 2005. This process should include the announcement of proposed actions with a suitable timeframe (no less than 60 days) for accepting comments on those proposed actions in an official journal. We also look forward to Viet Nam's consistent and timely publication of draft measures in an official journal at a draft stage; timely notification to the WTO Secretariat with due allowance for the review and response to comments; and, clarity regarding a proposed measure's expected dates of adoption and implementation. As currently standing measures are undergoing amendment to bring them into conformity with the SPS Agreement, we expect that all proposed amendments be similarly notified to the WTO.

A third critical action Viet Nam must take is the establishment of a transparent science-based process for the assessment of risk. In the absence of a clearly defined process of risk assessment, it will be very difficult for Viet Nam to justify the SPS measures it has in place or is currently contemplating. This process should allow for the acceptance and review of scientific information from interested parties. This critical first step in the development of SPS measures should be clearly articulated and available for review by no later than mid-November 2005.

Answer:

As mentioned in paragraph 269 of the Draft Report, the Prime Minister has appointed the Ministry of agriculture and Rural development (MARD) together with the concerned Ministries to build a Regulation on the coordination and operation of Viet Nam's National SPS Office (VNSO), the Inter-Ministerial Working Team and the operation of SPS technical support points of VNSO with relevant Ministries in 2005. A suitable timeframe (no less than 60) for public comments shall be stipulated in this Regulation and be posted on VNSO's Internet portal at a draft stage as regulated in SPS Agreement. The public and private sectors can access the SPS notifications and measures on this website.

Article 4 of Decision No. 99/2005QD-TTg also mentions clearly the functions and tasks of concerned Ministries in implementing obligations with respect to notification and enquiry.

Members' technical assistance to build up notification procedures and SPS official journal in the year of 2005 is highly appreciated and welcome.

Question 248

We are reviewing Viet Nam's translation of the Ordinance for Plant Protection and Quarantine and its implementing decree. Given that it will govern all of Viet Nam's SPS import requirements for plants and their derivative products, we must evaluate its statutes with respect

to the SPS Agreement, and by extension, make a determination on readiness for WTO accession.

Answer:

We are looking forward to the Member's specific comments on the Ordinance.

Question 249

What is MARD's timetable for bringing other plant quarantine related regulations into consistency with the SPS Agreement?

Answer:

We confirm that Viet Nam's plant quarantine regulations are, in principle, consistent with the SPS Agreement. However, domestic regulations still do not meet appropriate level for protection compared with the purview of the SPS Agreement and international standards for phytosanitary measures. Therefore, Viet Nam has developed a timetable for setting up new phytosanitary measures, amendment and supplement of current phytosanitary regulations to better meet its own requirements. Detailed timetable are as follows:

- Amendment and supplement of the Plant Quarantine Regulation in 2007;
- Development a national pest risk analysis procedure in 2006;
- Setting up of equivalent recognition procedures for phytosanitary measures of other countries in 2007;
- Further development of national standards based on ISPMs (24 ISPMs); and
- Regarding the plant pest surveillance and monitoring, Viet Nam has already established provisions on this matter.

Question 250

With reference to the Law on the Promulgation of Legal Normative Documents of 2002, we remain concerned that the solicitation of "opinions from all relevant bodies" may not be an open and transparent process.

It is our understanding that in many cases the degree of specificity predetermines which of the four official journals where a measure is announced; the drafting ministry predetermines who should review a particular regulation and, that the regulation is published only when it has reached the stage to announce adoption. We would appreciate Viet Nam's assurances that these practices will be amended and a description of how that will be accomplished.

Answer:

Viet Nam has been soliciting comments from all parties concerned early in the drafting process of its laws, including by submitting draft laws to the Working Party.

Question 251

We also note that in the working party report, page 97, paragraph 269, Viet Nam states that MARD and other Ministries were developing regulations on coordination and operation for Viet Nam's national SPS Office and establishing SPS notification and enquiry point networks between Viet Nam's SPS office at MARD and focal points at relevant ministries. The report

states that Viet Nam expects its national SPS Office to be fully operational upon accession. The report also says that there will be a 15-day period of notification before regulations are enacted.

- What measures does Viet Nam have in place that specifically guarantee that any and all potentially trade restrictive SPS measures will be publicly announced in the draft stage and that any interested party may comment, as required in the SPS Agreement?
- Further, when will Viet Nam adopt measures that allow for more transparent regulatory steps, that is: promulgation of the draft regulation; a 60-day public comment period; a final review process to incorporate comments; a proposed date of adoption; and, future date of enforcement?

Answer:

- As mentioned in paragraph 269 of the Draft Report, the Prime Minister has appointed the Ministry of agriculture and Rural development (MARD) together with the concerned Ministries to build a Regulation on the coordination and operation of Viet Nam's National SPS Office (VNSO), the Inter-Ministerial Working Team and the operation of SPS technical support points of VNSO with relevant Ministries in 2005. A suitable timeframe (no less than 60) for public comments shall be stipulated in this Regulation and be posted on VNSO's Internet portal at a draft stage as regulated in SPS Agreement. The public and private sectors can access the SPS notifications and measures on this website.
- Article 4 of Decision No. 99/2005QD-TTg also mentions clearly the functions and tasks of concerned Ministries in implementing obligations with respect to notification and enquiry.

Question 252

In paragraphs 271-3, page 98, of the Working Party Report, Viet Nam acknowledges that it has not fully completed establishment of its food safety inspection procedures and veterinary hygiene procedures, yet expects to see them in place by accession.

What mechanisms or regulations will Viet Nam put in place to ensure that proposed changes in the food safety inspection system and other measures will be notified to private sector parties?

Answer:

- Paragraphs 271-273: As replied before the 10th session of the Working Party that food safety inspection procedures and veterinary hygiene procedures of Viet Nam have been stipulated in details in Government's Decree No. 33, Decree No. 163 and other Decisions No. 45, 46, 47 of Ministry of Agriculture and Rural Development.
- As mentioned in paragraph 269 of the Draft Report, the Prime Minister has appointed the Ministry of agriculture and Rural development (MARD) together with the concerned Ministries to build a Regulation on the coordination and operation of Viet Nam's National SPS Office (VNSO), the Inter-Ministerial Working Team and the operation of SPS technical support points of VNSO with relevant Ministries in 2005. A suitable timeframe (no less than 60) for public comments shall be stipulated in this Regulation and be posted on VNSO's Internet portal at a draft stage as regulated in SPS Agreement. The public and private sectors can access the SPS notifications and measures on this website.

Question 253

We congratulate Viet Nam for its creation of an SPS Enquiry Point before accession to the WTO. In providing SPS training to 15 representatives of seven Ministries and agencies in

Hanoi this past July, our Enquiry Point representatives were highly impressed by their level of expertise and teamwork.

However, it was noted that access to SPS Enquiry Point work was tightly controlled and that approval to bring an expert from one ministry to consult with another ministry on regulatory concerns required an Agreement between the heads of those ministries prior to the initiation of the task.

It is our hope that Viet Nam would consider a more open and flexible policy to allow inter-agency consultation without such burdensome requirements as this will only delay Viet Nam's ability to effectively respond to changes in SPS entry requirements or the health status of its trade partners.

Answer:

Article 4 of Decision No. 99/2005QD-TTg also mentions clearly the functions and tasks of concerned Ministries in implementing obligations with respect to notification and enquiry.

We would like to thank for the comment and will take that into account in the operation of the Enquiry Point.

Question 254

We thank Viet Nam for supplying us with an English translation of its new Veterinary Ordinance Number 33 of 2005. The regulation is clear and straightforward in its manner of execution. However, we remain concerned by a number of issues.

- First, should terrestrial or aquatic animals entering Viet Nam fall under scrutiny due to the potential presence of a disease or its vector and thereby become subject to additional screening measures, there is no provision within the ordinance of how either the importer or the exporter is to be informed of this decision.
- Second, there is no discussion of how costs would be borne for the additional quarantine, testing and/or destruction of the animal.
- A third concern regards monitoring. Should either an imported or domestic terrestrial or aquatic animal come under suspicion for infection with an OIE-reportable disease or IPPC-monitored pest, there is no provision as to how this disease event would be reported to the international standards body, border authorities, trade partners or to the supplying country (should the suspected animal or fish be supplied from outside of Viet Nam).
- What steps is Viet Nam prepared to take prior to accession to provide a clear channel of communication *vis-a-vis* all of these quarantine concerns to the impacted private sector parties? Also, how will Viet Nam convey, when relevant, to OIE, IPPC, and other concerned trade partners the possible presence of a reportable disease or pest?
- We remain highly concerned with Viet Nam's poultry entry requirements. If we understand correctly, Veterinary Ordinance Number 33 replaces Viet Nam's previous legislation concerning poultry entry requirements. Is this correct? If not, what is still in place?

Answer:

The Veterinary Ordinance of 29 April 2004 promulgated by the President's order No. 06/2004/L/CTN (referred to as "the Veterinary Ordinance 2004" and the Decree No. 33/2005/ND-CP of

15 March 2005 regulating the implementation of a number of Articles of Veterinary Ordinance (referred to as "the Decree 33").

- Article 35.1 of the Decree No. 33/2005/ND-CP regulates the procedure for quarantining imported animals, including the quarantine information, quarantine documents checking, quarantine isolation. The regulation on treatment of infected animals or animal products is being drafted and is expected to be issued in 2006.
- Article 51.3 of the Decree No. 33/2005/ND-CP regulates that the owner must pay fees and charges for the quarantine according to the laws on fees and charges. The costs for the additional quarantine, testing and or destruction of animals are based on the Decision No. 08/2005/QD-BTC, regulating on fees of veterinary services.
- Viet Nam is a member of OIE. Therefore, should an imported or domestic terrestrial or aquatic animal comes under suspicion for infection with an OIE-reportable disease, Viet Nam must notify to OIE and conform with the OIE regulations. The stakeholders are informed of this decision if there is a bilateral Agreement or request.
- Viet Nam will post on the Website of the Department of Animal health (www.mard.gov.vn/dah) quarantine concerns. The possible presence of a reportable disease will be sent by Viet Nam to OIE in accordance with OIE's regulations, this information will also be sent to the other stakeholders as agreed in bilateral Agreements or when requested.

Question 255

Article 6: Why must product entry be restricted to no more than two-thirds of the expiration period? How does this further ensure food safety? What is the intent of this requirement? What risks are posed, have they been evaluated, and is a copy of that evaluation/assessment available?

Answer:

Article 6: This article is applied for material and food additives imported into Viet Nam, not for the final food product itself. As the imported material and additives will be used for manufacturing/producing food products, it will take some time from the date of importation for customs clearance, warehouse, manufacturing/producing period, storage, distribution and consumption. Therefore, if the expiry date of material and additive runs close to the expiry, they may expire when it reaches the final consumption. This rule arises from real practices. During inspection, Viet Nam have found some of food producers using expired food additives but when checking importation of these additives, we found that they were not yet expired upon importation. However, the post-importation inspection is very difficult in these cases.

Question 256

Article 14: Can Viet Nam explain why all dairy, meat, egg, fish, micronutrients, additives, instant beverages, "congealed foods", and soy milk, and tubers are considered "high danger" products and must have a food safety certificate?

Answer:

Article 14: It was a translation error. This Article regulates the list of high risk foods, it means that the food can easily cause food poisoning, is food borne diseases and is used frequently by Vietnamese people. This Decree does not regulate that the high risk foods must be granted the Certificate of food hygiene and safety but the manufacturing/trading entities of these high risk food shall be inspected and granted the Certificate of Compliance with food hygiene and safety requirements (similar to the GMP certificate), including requirement on sanitation of facility, equipment, tools, health and knowledge of food hygiene and safety of workers.

Question 257

Article 20: While we support the use of food labelling guidelines should genetic engineering result in a significant change to the composition, characteristics, and nutrient content from its traditional counterpart, we are concerned that Viet Nam should require compulsory food labelling for all genetically engineered products. Can Viet Nam explain why it is mandating mandatory labelling for agricultural biotech products ("GMOs") in all foodstuffs when there is no food safety risk?

Answer:

Viet Nam is drafting its rules on food labelling (to replace Decision No.178/1999/QD-TTg). GMOs will also be subject to these generally applied rules of this revised Decision.

Question 258

Article 28: What does Viet Nam mean by "potentially hazardous food?" In other words, without a clear definition of risk and a science-based assessment for appropriate mitigation of that risk, we do not have any standard by which to define or monitor or enforce compliance. We do not understand the intent of this requirement.

Answer:

Article 28: The term "potentially hazardous food" used in Food Hygiene and Safety Ordinance is not a close translation. It would be more appropriately translated as "high risk food". The main purpose of Article 28 Part 2 is to make sure that manufacturing/trading establishments which produce/trade high risk food complying with requirements of facility's sanitation, hygiene of equipment and tool, hygiene of personnel (health examination and knowledge on food hygiene and safety). In order to do this, the competent agencies have to periodically inspect the establishments and grant Certificate of Compliance with food hygiene and safety requirements. Standard for monitoring and enforcing compliance is Regulations on food hygiene and safety of high-risk food for manufacturing/trading establishments issued by Ministry of Health.

Question 259

Article 35: Can Viet Nam explain why all pre-packaged food must contain shelf life requirements in addition to expiration date information? How does shelf life provide food safety that is not already identified by the expiration period? What risks are posed, have they been evaluated, and is a copy of that evaluation/assessment available?

Article 38: Without implementing a HACCP-based program for tracing back how food-borne pests, diseases, pathogens, contaminants may be deliberately or accidentally introduced into plants, animals or food, how can Viet Nam effectively monitor, adjudicate, assess penalty and take corrective action for failures to comply with food safety requirements? How will penalties be assigned and reported? What avenues for appeal are allowed? Currently as the requirement is stated, all costs for loss and treatment are the burden of every individual and organization within the food manufacturing process. What is the intention of Article 38.2?

Answer:

- Article 35: This Article regulates the labelling for pre-package foods. "A food label shall have manufacture date, expiry date, shelf life". It means that it should be labelled the manufacture date or the expiry date or the shelf life, not all of these above.

- Article 38: The purpose of this Article is to regulate the responsibilities of all stakeholders in prevention and remedies of food poisoning and food borne diseases. Based on the epidemiological investigations, the cause of food poisoning and food borne diseases and individual/organization who are in responsible for the poisoning would be identified. When the foods and the people in charge are clearly identified (processing units or trading enterprises or the consumers themselves), expenses for food poisoning recovery will be decided accordingly.

Question 260

Regarding the Decree of the Government Stipulating Detailed Implementation of Some Articles of Food Hygiene and Safety Ordinance of 7 September 2004, we are very concerned about the translation quality. We would suggest acquiring another translation.

Answer:

We will forward another version of translation for reference.

Question 261

The following issues are not adequately dealt with or are missing from the Ordinance:

- **Development of a process for approving scientifically justified measures stricter than international measures;**
- **Updating terminology contained in the Veterinary Ordinance List A and List B of diseases identified by the OIE;**
- **Clarification in some specific areas of the document, possibly due to translation problems (e.g., in the section on prohibited acts, the passages on regionalization are weak);**
- **Additional definitions of specific terms (e.g. the definition given of the term "buffer zone" should be amended to apply equally to both domestic and foreign outbreaks of disease); and**
- **Amendments to the Veterinary Ordinance to establish a process for the recognition of equivalence in foreign establishments, and ensuring that all our establishments will be recognized as equivalent prior to the establishment of this formal process.**

Answer:

The Veterinary Ordinance promulgated by the President's order No. 06/2004/L/CTN called "the Veterinary Ordinance 2004" and the Decree No. 33/2005/ND-CP regulating the implementation number of Articles of Veterinary Ordinance called "the Decree 33".

- The Decree No. 33 only replaces the Decree No. 93/CP dated on 27 November 1993, the other concerned legislation is still in place.
- The measures stricter than international ones maybe considered to be issued with the view to protecting human and animal health at the appropriate level, paying attention to minimize the adverse effects to trade. At present, the material and technical facilities of Viet Nam are still weak to apply the SPS measures that are stricter than International ones. When it is appropriate, Viet Nam will develop a separate piece of legislation for this purpose.
- The terminology List A and List B in the Veterinary Ordinance is built with reference to the definition of the OIE. OIE yearly re-checks, amends, supplements the List of dangerous aquatic diseases which must be informed to the OIE. The updating of definitions and the List according to the guidance of OIE is necessary.

- Definition of "Buffer zone" was clearly given in the Ordinance. In Viet Nam, "Buffer zones" are identified for either domestic outbreaks or foreign outbreaks of the neighbouring countries. Ministry of Agriculture and Rural Development has issued Decision No. 64/2005/QD-BNN dated 13 October 2005 promulgating the List of must-declared diseases, the List of dangerous animal diseases, the List of diseases subject to the application of compulsory disease prevention measures based on List A and List B diseases identified by OIE.

Question 262

Article 8: What is the list of animals banned for import and export? Why is soaking in chemical solution or using water injection prohibited in products of animal origin? Can you please provide a description of how Viet Nam determined this is a food safety risk?

Answer:

Article 8: The list of animals banned for import and export is regulated to implement the CITES convention on protecting rare animals. The lists of banned animals for export and the list of allowed animals for imported are issued at the MARD's Decision No. 58/2001/QD/BNN-KNKL dated on 23 May 2001 and Ministry of Fishery's Decision No. 344/2001/QD-BTS.

Prohibiting soaking in harmful chemical solution or using water injection is to prevent using chemicals for long keeping of the products which are harmful for consumers or using water to cheat consumers.

Question 263

Veterinary Drugs: We have some serious concerns with the current legislation, most specifically that any new drugs being put forward for circulation in Viet Nam must be re-trialed in Viet Nam, essentially duplicating (at great expense) trials which have already been performed by the producer. The need for a review of quality based on "complaints or denunciations" is also problematic, and open to abuse for non-health and safety issues. We would like to see a determination by Viet Nam on how to differentiate those types of complaints from real issues of quality.

Answer:

Veterinary drugs: Ministry of Agriculture and Rural Development will promulgate the protocol of drug registration for circulation in Viet Nam soon. The protocol includes the regulations on the kinds of drugs to be re-trialed.

When veterinary drugs do not meet requirements on product quality and safety, users have the rights to complaint or denunciate to the competent authorities. The classification of complaints whether they are originated from quality and safety requirements would be based on the inspection or testing results of the veterinary drug control agencies upon request of Government management body.

- **Free Zones, special Economic Areas**

Question 264

We remain concerned that subsidies in the form of incentives for domestic and foreign investments would only be eliminated within seven years from the date of accession.

Answer:

With respect to export subsidies in the form of investment incentives, including those operating in export processing zones that are prohibited under the SCM Agreement, Viet Nam has revised its draft Law on Investment to eliminate the practice of granting these subsidies from the date when the new rules become effective (i.e. 1 July 2006 if so approved by the National Assembly). Additionally, Viet Nam shall eliminate the prohibited subsidies in the form of investment incentives for the licensed projects no later than seven years from the date of Viet Nam's accession to the WTO in order to observe its commitments with the existing investors and stabilize the business environment. The detailed information on the subsidies programs and the schedule for elimination of the prohibited subsidies shall be elaborated in the updated notification on industrial subsidies.

Question 265

Paragraph 304 and Question 123 of WT/ACC/VNM/38; Viet Nam is requesting a seven-year transitional period to phase out prohibited export subsidies in the form of investment incentives. We do not find this acceptable and urge Viet Nam to abolish all prohibited subsidies upon accession.

Answer:

With respect to export subsidies in the form of investment incentives, including those operating in export processing zones that are prohibited under the SCM Agreement, Viet Nam has revised its draft Law on Investment to eliminate the practice of granting these subsidies from the date when the new rules become effective (i.e. 1 July 2006 if so approved by the National Assembly). Additionally, Viet Nam shall eliminate the prohibited subsidies in the form of investment incentives for the licensed projects no later than seven years from the date of Viet Nam's accession to the WTO in order to observe its commitments with the existing investors and stabilize the business environment. The detailed information on the subsidies programs and the schedule for elimination of the prohibited subsidies shall be elaborated in the updated notification on industrial subsidies.

Question 266

Viet Nam states in the draft Working Party report that "Data on output and exports of enterprises located in industrial and export processing zones were not available."

- **Unless the output of these firms is excluded from Viet Nam's national statistics, we believe that this information is available.**
- **We seek the elimination of prohibited subsidies in the zones and legislation that ensures that sales inside the rest of Viet Nam are subject to the exempted taxes and tariffs.**

Answer:

All the available data will be incorporated into the updated notification on industrial subsidies, that will be submitted to the Working Party.

We would like to confirm that the exemption of export duties with respect to goods sold from export processing zones to the Vietnamese territory will be subject to normal customs formalities.

Question 267

We propose the following revised draft commitment language for this section.

"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 provisions that condition the qualification for or receipt of tax or other any other incentives on export, export performance or the use of locally produced goods over imports. The representative of Viet Nam confirmed that all industrial and export processing zone subsidies that fall within the meaning of Article 3 of the WTO Agreement on Subsidies and Countervailing Duties would be eliminated on or before the date of accession, and that such subsidies would not be grandfathered or reintroduced. Moreover, no new subsidies that are inconsistent with Article 3(a) or (b) would be introduced after 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:

We accept the proposal, except that (i) it is only applicable to export processing zones; (ii) commitments on prohibited export subsidies in EPZs will be subject to the results of the discussion on export subsidies.

- **Government procurement**

Question 268

We appreciate Viet Nam's statement in paragraph 312 of the draft Working Party report on its willingness to consider joining the Agreement on Government Procurement after WTO accession. We reiterate our request that Viet Nam become an observer to the Agreement upon accession.

Answer:

We would like to consider acceding to the Government Procurement Agreement after the accession to the WTO.

- **Trade in transit**

Question 269

Referring to paragraph 319, what is the average time it takes for customs to process transit shipments?

Answer:

Viet Nam does not have provision on average time-limits of customs procedures towards goods in transit.

Goods in transit to Viet Nam should:

- Be undergone customs procedures at the first importing port and final exporting port; and
- Be subject to customs inspection if there is any signal of legal violation.

- **Agricultural policies**

Question 270

This section of the Working Party report will need to be updated following further work in the plurilateral process on agriculture. In section "(b) Exports" we encourage Viet Nam to adopt the second of the square bracketed commitments proposed under paragraph 330.

Answer:

Concerning export subsidies in agriculture, Viet Nam commits as follows:

"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's existing rules"

Question 271

Paragraphs 321 and 322 seem to be superseded by the progress achieved by Viet Nam (e.g. paragraph 322 "...Viet Nam would consider using tariffs instead of quantitative restrictions"). Thus they should be updated by adding following paragraph:

323bis: "Viet Nam confirmed that, as from the date of accession, it would apply border protection in agricultural products in a consistent manner with WTO Agreements, in particular with Article 4 of the Agreement on Agriculture."

Answer:

We agree with the comment.

Question 272

Paragraph 330: As stated in the meeting of the Working Party on 15 September, we can accept the first option in paragraph 330, subject to the elimination to the reference to future negotiations:

"330. [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.]

Member cannot accept commitment language which refers to the "future" rules, which are unknown today. Such wording would deprive the Draft Report from the certainty that it is supposed to deliver. Furthermore, the reference to such "future" rules is not necessary for

Viet Nam, as it will enjoy all rights and be subject to all obligations any developing member may have in the future.

Answer:

We agree with the proposal and is willing to break the brackets for this 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's existing rules."

Question 273

Agricultural supporting tables WT/ACC/SPEC/VNM/3/Rev.5: Table ES:1 has to be amended in accordance to the previous elimination commitment by replacing the amounts of export subsidies it currently shows with "NIL".

Answer:

These figures were factual statistics in three years from 1999 to 2001. Viet Nam's commitment is reflected in the Draft Report (i.e. paragraph 330) and the agricultural subsidies tables will also be revised to reflect the final results of the discussion.

Question 274

This section seems to be unfinished. Following paragraph should be added:

336bis): "Viet Nam confirmed that it would apply subsidies on agricultural products in a consistent manner with WTO rules, in particular with the Agreement on Agriculture, including its Schedule of Commitments in Domestic Support as exhibited in the supporting tables in document WT/ACC/SPEC/3/....)"

Answer:

We agree to insert this suggestion.

Question 275

We would like to thank Viet Nam for the provision of WT/ACC/SPEC/VNM/3/Rev.5. We thank Viet Nam for addressing some of our earlier comments in this latest domestic support notification revision. We have a few points however that we would like Viet Nam to clarify.

- **During our last plurilateral meeting in September, Viet Nam indicated that it had removed freight subsidies on salt from Table DS:2.**
- **We note, however, that the term "freight" continues to be included in the description of its programs under Article 6.2. Article 6.2 is designed to cover investment subsidies, agricultural input subsidies and diversification from growing illicit narcotic crops.**
- **Freight subsidies are not considered input subsidies, as freight assists the transport of final product to market (i.e. it is not an input to production such as fertilizer).**

- **It is standard practice in accessions for freight subsidies to be scheduled under Non-Product Specific AMS in supporting table DS:9. We ask that Viet Nam adjust its tables accordingly.**

Answer:

Freight subsidies in Table DS:2 are freight subsidies for fertilizer, rice and maize seeds under the programme for farmers living in highland and disadvantaged areas. These subsidies are agricultural input subsidies so they are in accordance with Article 6.2. Please also refer to the explanation in previous Working Party sessions.

Question 276

- **Could Viet Nam alter the table underneath DS:4 labelled "*De minimis* (10 per cent or production value)." All figures seem to be correct, except for sugar which appears to list the total value of production (6956.00, 6102.70, 6831.30) instead of 10 per cent of production (695.6, 610.2, 683.1 etc...).**
- **In keeping with the ACC/4 methodology, we would prefer that Viet Nam described its AMS as "Base Total AMS" in the fourth column of DS:4 and in the bottom far-left hand corner of its table.**
- **In the last row in Table DS:4, Viet Nam has left the Total AMS figures as 0 from 1999-2001. This row should be updated to reflect the addition of all the totals in the row above (i.e. so that Base Total AMS will be 3379.1 in 1999, 3504.73 in 2000 and 1966.95 in 2001, and an average of 2950.26 over the three years.**

Answer:

- We will take note and correct accordingly.
- We will take note and correct accordingly.
- According to the WTO rules, if the Total AMS is lower than *de minimis* (i.e lower than 10 per cent of total of agricultural products) then AMS is 0. Viet Nam has done accordingly.

Question 277

Our analysis of DS:5 indicates that Viet Nam has scheduled an applied administered price based on Viet Nam's internal price of raw sugar and not on its support for sugarcane prices. This is shown in Column 4 of DS:5 by an applied price of 5,819,000 Dong/t in 1999 (or around US\$ 417/t). Viet Nam indicates in the footnote, however, that its official applied administrative price for sugarcane was 240,000 Dong/t in 1999.

- **This implies that Viet Nam's internal price for raw sugar in 1999 (US\$ 417/t) is more than twice the level of the world price (US\$ 162/t in 1999). We seek supporting data from Viet Nam (e.g. Official Statistical publications) to verify that its internal raw sugar prices were this high.**

Notwithstanding this, we have concerns with the methodology used by Viet Nam to calculate support for sugar. Viet Nam acknowledges that it does apply an administered price in relation to sugarcane, but not on raw sugar. Hence, its market price support is directed at sugarcane. As Viet Nam does not apply an applied administered price for raw sugar, it is therefore inappropriate to calculate market price support for sugar on the basis of raw sugar prices in DS:4 as it has done.

Instead, Viet Nam should calculate market price support on the basis of its official applied administered price on sugarcane and an external reference price for sugarcane (if this is possible to find). If an external reference price is not available for sugarcane, we encourage Viet Nam to utilise the provisions of the Agreement on Agriculture concerning Equivalent Measures of Support (EMS).

- Annex 4 of the Agreement indicates that EMS can be calculated where market price support exists, but for which the calculation of this component of AMS is not practicable.
- Annex 4 also indicates that EMS shall be calculated on a product-specific basis as close as practicable to the point of first sale receiving market price support. EMS is calculated by using the applied administered price and the quantity of production eligible to receive that price or, where this is not practicable, on budgetary outlays used to maintain the producer price.
- We encourage Viet Nam to utilise this methodology in revising its tables to capture official market price support for sugarcane.

We request that Viet Nam also indicate 1999-2001 average external reference prices for commodities receiving market price support in Table DS:5, as the Agreement on Agriculture notes that the fixed external reference price would generally be the average c.i.f unit value for the basic commodity (in the case of a net importing nation) in the base period.

Answer:

The purpose of the policy here is to support sugar, through different measures (subsidies, import licensing...). To implement this policy, one measure that has been used was that the Government set the minimum price for sugar-cane (240,000 VND/T). The price of raw sugar is calculated base on sugarcane's price and average cost of sugar production. The conversion method was actually proposed by all Members that participated in the previous Plurilateral Meetings.

The figures indicated by Statistics General Department (Statistic year book) only show the retail price of refined sugar on the domestic market.

Year	Price (VND/T white-sugar)
1999	6,975,000 (equal 500.2 USD/T)
2000	5,049,000 (357USD/T)
2001	6,458,000 (436 USD/T)

As the final purpose of the policy is to support the sugar industry, the methodology of the policy is the most appropriate. Therefore, it has been agreed by Members participating in the previous Plurilateral Meetings on Agriculture.

Question 278

Supporting Table ES:1: We welcome Viet Nam's intention to bind its agricultural export subsidies at zero.

We believe language in the Working Party report should reflect this commitment and state the following:

The representative of Viet Nam confirmed that agricultural export subsidies would be bound at zero in Viet Nam's Schedule of Concessions and Commitments for Goods. He also confirmed

that export subsidies applied to agricultural products would accordingly be eliminated by the date of accession. The Working Party took note of these commitments.

Answer:

We agree the first bracketed commitments under paragraph 330 as follows:

"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 rules"

Question 279

The factual basis for this section is under development by the agricultural plurilateral.

Answer:

We would like to take note of the comment.

- **Fisheries**

Question 280

This section appears to need further development. Please provide an updated description of Viet Nam's fisheries industry including the number of firms, number of employed persons, its contribution to GDP, growth of the sector, FDI, export and import statistics, and export and import growth.

We are likely to provide additional questions and comments for this section in the near future.

Answer:

Follows are some updated description of Viet Nam's fisheries industry as requested:

- The number of enterprises (as of 31 December 2003): 1,468 with average capital of approximately 0.5 bil VND.
- Labour force in fisheries industry (as of 1 July 2004): 5.4 million people (including related-service sectors).
- Fishery GDP in 2004: 27 474 billion Dong.
- The average annual growth rate of fisheries production: 8.99 per cent for period of 2000-2004.
- FDI in 2004: 5 projects with US\$ 7.8 million.
- Exporting turnover in 2004: US\$ 2.401 billion.
- The export growth rate of average 13.02 per cent for period of 2000-2004.
- Fisheries importing turnover in 2000 was US\$ 30.65 million, in 2001: US\$ 32.24 million, in 2002: US\$ 64.17 million.
- The import growth rate of average 84.4 per cent annually.
- The turnover of importing feeds and chemical to serve aquaculture was US\$ 108.19 million in 2000, US\$ 105.54 million in 2001, US\$ 116.77 million in the 9 early months of the 2002.
- Growth rate of feeds and chemical imports: about 22.5 per cent annually.

- **Trade in civil aircraft**

Question 281

We appreciate Viet Nam's position as expressed in paragraph 314 that it would consider joining the Agreement on Trade in Civil Aircraft after accession. We reiterate our request that Viet Nam consider joining the Agreement upon accession.

Answer:

We would like to consider acceding to the Agreement on Trade in Civil Aircraft after the accession to the WTO.

- **Textiles regime**

Question 282

We appreciate the updating and expanding of this section. It is much improved.

Answer:

We would like to note that the whole section is not necessary as the ATC has expired and Viet Nam is not applying quotas on textile and clothing products.

- **Core Labour Standards**

Question 283

We request that Viet Nam remove the brackets on a section that merely describes Viet Nam's labour laws and relations with the International Labour Organization.

Answer:

Viet Nam requests to remove the section. It is not a practice in accession to include a section on labour in the Working Party Report.

V. TRADE-RELATED INTELLECTUAL PROPERTY REGIME

- **GENERAL**

Question 284

Article 14 of the Draft defines who will benefit from copyright protection, and primarily grants copyright protection only to those authors who are Vietnamese citizens (paragraph 1). However, the principle of national treatment (Article 3 TRIPS) requires Members to accord nationals of other Members treatment no less favourable than it accords its own nationals. Also, Article 3 of the Berne Convention is directly applicable in Viet Nam and it requires protection for authors who are nationals in any one of the countries of the Union.

The way Article 14 of the draft law reads now, even with paragraph 5, does not seem to guarantee that equal protection is granted to both Vietnamese authors and authors who are not Vietnamese citizens.

Can Viet Nam assure that Article 14 can be interpreted in accordance with the Berne Convention and the TRIPS Agreement?

Answer:

Draft Intellectual Property Law (the 9th draft) already guarantees the implementation of Article 3 of TRIPS as well as Article 3 of Berne Convention. Particularly, Article 13 of the draft law specifies that "authors, owners having works eligible for copyrights protection shall include foreign organizations, individuals having works eligible for protection in Viet Nam in accordance with international treaties to which Viet Nam is party". This means that nationals of any Member of the Berne Union or of the World Trade Organization (upon Viet Nam's accession to WTO) shall be considered as entities eligible for copyright protection in Viet Nam. The draft law includes no provisions on discrimination between Vietnamese and foreign entities, therefore ensures equal protection for Vietnamese authors and authors who are not Vietnamese citizens, being in full compliance with TRIPS Agreement and Berne Convention.

Question 285

Article 16 exempts specific works from copyright protection. Paragraph 1a), b) and d) are drafted in a very broad way, which makes it difficult for authors to assess what kind of works will be denied protection. Furthermore, these exemptions in the draft law appear to be inconsistent with the Berne Convention as they go beyond the exemptions provided for in Article 2 and Article 2bis of the Berne Convention which are also incorporated in the TRIPS Agreement by Article 9 TRIPS.

Please specify what kind of works will be denied protection in application of Article 16.

Answer:

Provisions on works that are not protected by the State were deleted from the draft Intellectual Property Law (the 9th draft has no such provisions).

Question 286

Articles 186 to 188 provide the framework for detailed implementation of Article 31 TRIPS. While analysing the provisions therein, we had the impression that two points may be missing:

- **According to Article 31b, sentence 4 TRIPS the right holder must be promptly notified of the compulsory license, a requirement which is not foreseen in the current draft.**
- **Article 31i TRIPS requires that any decision relating to the use of inventions under compulsory licenses shall be subject to a judicial or other independent review by a distinct higher authority. Provided that an administrative appeal, as mentioned in Article 188 paragraph 3 of the draft law, guarantees such an independent review by a higher authority, Article 31i TRIPS has been implemented. But, in addition, Article 31j TRIPS requires the right to an independent review also for decisions relating to the remuneration that must be paid for the use of inventions under compulsory licenses.**
- **This right to review is not expressly mentioned in Article 188 of the draft law in its version of July. Can you specify if this right has been included in a later version of the draft law?**

Answer:

The provisions on the obligation of making notice to the right holder about the decision on compulsory licence in line with Article 31(b) of the TRIPS has been included in the 9th draft of Intellectual Property in Article 149 paragraph 3 as follows: "The state authority having decided on compulsory licensing shall promptly inform the holder of exclusive right to use invention about the decision".

An opportunity of review in a judicial or an independent administrative procedure by a higher authority in respect of any administrative decisions, including decisions on compulsory licenses for inventions as well as the remuneration to be paid under such licenses is guaranteed by the Law on Complaints and Denunciations and the Ordinance on Procedures for Settlement of Administrative Cases. Particularly, Article 149.2 of the draft Intellectual Property Law provides "A decision on compulsory licensing shall fix appropriate scope and conditions of use in accordance with Article 148 of this Law", including the payment of an adequate remuneration to the holder of exclusive right to use invention" (Article 148.1.d). Consequently, the decision relating to such remuneration is to be included in a compulsory licence decision. On the other hand, Article 149.4 provided for "Decisions on grant or refusal of a compulsory licence shall be subject to an administrative appeal or a judicial litigation in accordance with the laws".

Therefore, the review of decisions relating to the payment of remuneration as a part of the decision on invention licence can be carried out in accordance with procedures for appeal or denunciation provided for in Article 149.2.

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

Question 287

With regard to "Protection of pre-programme and encrypted signals in accordance with the TRIPS Agreement" in L.7-9, P. 126, please specify under which article of the TRIPS Agreement this protection is required. (It is our understanding that the protection of pre-programme and encrypted signals is not a requirement by the TRIPS Agreement, and that it is currently under discussion at WIPO for the Treaty for Protection of Broadcasting Organizations.).

Answer:

Protection of pre-programmed and encrypted signals is not required by the TRIPS. Provisions on such protection that would be promulgated in the Intellectual Property Law just have a connection with other treaties that Viet Nam has signed. Therefore, the last sentence in paragraph 362 of Draft Report of the Working Party (WT/ACC/SPEC/VNM/5/Rev.1) should be deleted.

Question 288

We look forward to reviewing a final version of the intellectual property law, to be promulgated in November 2005, so we may determine whether Viet Nam's intellectual property regime is TRIPS compliant.

Answer:

A free English translation of the 9th draft Intellectual Property Law, available through WT/ACC/VNM/41/Add.1, (the draft submitted to the 8th Session of the National Assembly of Viet Nam in October 2005 for debating and consideration of promulgation in November 2005) has

been furnished to the Working Party and made public on the website of the National Office of Intellectual Property of Vietnam: <http://www.noip.gov.vn>

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

Question 289

A recent WTO dispute settlement Panel on geographical indications confirmed that prior trademarks have the right to prevent the use of GIs where such use would likely confuse the consumer, which is provided for under Article 16.1 of TRIPS. A regulation that fails to allow the owners of valid pre-existing trademarks the right to prevent confusing uses of GIs does not fit within the narrow permissible exception of TRIPS.

We welcome further information from Viet Nam concerning any legislative developments to exclude the protection of geographical indications conflicting with trademark rights previously acquired through registration or broad use.

Answer:

The provisions on the exclusion of the protection of geographical indications conflicting with a prior protected trademark in compliant with the TRIPS and the WTO dispute settlement has been included in the draft Intellectual Property Law, available through WT/ACC/VNM/41/Add.1. Particularly, Article 80.3 of the draft Law provided that geographical indications that are identical with or similar to a protected trademark shall not be registered, if the use of such geographical indications, when conducted, would cause confusion as to the source of products.

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

Question 290

With regard to "Protection of pre-programme and encrypted signals in accordance with the TRIPS Agreement" in L.7-9, P. 126, please specify under which article of the TRIPS Agreement this protection is required. (It is our understanding that the protection of pre-programme and encrypted signals is not a requirement by the TRIPS Agreement, and that it is currently under discussion at WIPO for the Treaty for Protection of Broadcasting Organizations.).

Answer:

Protection of pre-programmed and encrypted signals is not required by the TRIPS. Provisions on such protection that would be promulgated in the Intellectual Property Law just have a connection with other treaties that Viet Nam has signed. Therefore, the last sentence in paragraph 362 of Draft Report of the Working Party (WT/ACC/SPEC/VNM/5/Rev.1) should be deleted.

- **Enforcement**

Question 291

Article 249 defines the circumstances under which an infringement of intellectual property rights constitutes a crime. Criminal law is of major importance in enforcing intellectual property rights because only the existence of severe penalties can provide for an effective deterrent. When analysing this provision, however, we had doubts whether it is fully compatible with Article 61 TRIPS, as the latter requires criminal procedures and penalties to be

applied at least in cases of wilful trademark counterfeiting and copyright piracy on a commercial scale.

Can you please specify whether Article 249 of the draft law ensures this?

Answer:

Provisions on intellectual property crimes were deleted from the draft Intellectual Property Law because such provisions are already included in Criminal Code. Articles 156, 157, and 158 of Criminal Code provide for crimes and penalties for production of and trading in counterfeits. Article 216 of the draft Intellectual Property Law defines intellectual property counterfeit goods as to include counterfeit mark goods and pirated copyright goods. According to the above-mentioned provisions, elements "wilful" and "commercial scale" is implied respectively by terms "counterfeit" and "production and trade". Thus, act of wilful trademark counterfeiting and copyrights and related rights piracy on a commercial scale shall be considered as crimes. This would be clarified in legal instruments guiding the implementation of the Intellectual Property Law and the Criminal Code.

Question 292

Enforcement measures, and specifically border control measures, are of paramount importance in the fight against counterfeiting and piracy. Therefore, it is very positive that Viet Nam wants to go beyond TRIPS and cover all infringement of intellectual property rights and not only counterfeited trademarks and pirated copyright goods as required by Article 51 TRIPS. Studying the provision in detail however, two issues caught our attention:

First, the information required to be submitted with an application for suspension of customs procedures under Article 254 seems to be quite extensive. While the right holder will usually be able to submit a detailed description of counterfeited or pirated goods, which allows the customs authorities to identify such goods, he will usually not be able to provide the customs authority with the name and address of the importer and exporter, a photo of the goods or information on the predicted time and venue of arrival of the goods. Requiring such detailed information leads to the result that many right holders will not be able to file an application for suspension of customs procedures that complies with Article 254 of the draft law.

Therefore, it is questionable whether Article 254 of the draft law is consistent with Article 51 TRIPS which only requires "a sufficiently detailed description of the goods to make them readily recognizable by the customs authorities". Could you please take position on this issue?

Secondly, the time period for the right holder for responding to the detection of infringing goods under Article 257 (one day after receiving notice) is very short. The right holder needs at least the time to contact a lawyer and to prepare the application for suspension of customs procedures.

This seems not to be feasible in one working day. Would you please explain your position on this issue?

Answer:

Firstly, obligation to submit information imposed on the person who requests for the suspension of customs procedures are provided for in Article 220 of the 9th draft, under which he must only provide information sufficient to identify the suspected intellectual property right infringing goods and shall provide with other information only if available such as name and address of the importer and exporter; information on the predicted time and venue of the completion of import and export

procedures; detailed description or photo of the goods suspected to be infringing goods; expert opinions of competent agencies in respect of the prima facie evidence. Such provisions are fully compliant with Article 51 of the TRIPS.

Secondly, the time period for the right holder to submit a request for the suspension of customs procedures in the case goods bearing signs of infringement have been detected as provided for in Article 223 the 9th draft is three working days from the date the right holder notified about such goods by the custom office.

Question 293

Referring to paragraph 414 of the draft Working Party Report (WT/ACC/SPEC/VNM/5/Rev.1), what type of documentary evidence would a plaintiff be required to submit in order to establish ownership of an IP right? Would a certified copy of a patent or a trademark registration suffice? Would a plaintiff be required to submit to the court an affidavit of ownership?

Answer:

Evidence to prove ownership of an IP right is understood as follows:

- For registered subject matters, documentary evidence is a legitimate copy of Protection Titles or extract of Register on patents, industrial designs, layout designs of integrated circuits, marks, geographical indications, plant varieties; Certificate of copyright registration; Certificate of related right registration;
- For unregistered subject matters, evidence is anything capable of proving the basis from which copyright, related rights, rights to trade names or rights to well-known mark arise;
- Plaintiff has no obligations to submit an affidavit of ownership to the court.

Such provisions as mentioned above have been included in the draft Intellectual Property Law, available through WT/ACC/VNM/41/Add.1 (Article 262.2 of the 9th Draft) which has been furnished to the Working Party and made public on the website of National Office of Intellectual Property of Vietnam: <http://www.noip.gov.vn>.

Question 294

What is the position and role of a "People's Prosecutor" in civil litigation?

Answer:

As provided for in Article 21 of the 2004 Civil Procedures Code, the People's Prosecution Institute shall control and supervise the conformation to laws and regulations in civil proceedings, exercise the rights to request, propose and protest, in accordance with laws and regulations, in order to ensure that civil cases and civil matters be settled timely and legally. The People's Prosecution Institute shall take part in trials in respect of cases where the court collects evidence that is complained by a party, or civil matters that fall within the jurisdiction of the court, or civil cases, matters where the People's Prosecution Institute protests the judgment and/or decision of the court.

Article 45 of the 2004 Civil Procedures Code provides for the duties, authorities of prosecutors as follows:

- To control and supervise the conformation to laws and regulations in the judgment of civil cases and the decision of civil matters by the court;

- To control and supervise the conformation to laws and regulations by those persons involving in the proceedings;
- To control and supervise judgments and decisions of the court;
- To attend trials for judgment of civil cases and sessions for decision on civil matters in accordance with regulations of Civil Procedures Code, and make statement of the opinion of the People's Prosecution Institute on the judgment or decision of civil cases or matters; and
- To carry out other tasks and authorities within the competence of the People's Prosecution Institute as assigned by the Director of People's Prosecution Institute.

Question 295

The following questions refer to paragraph 420 of the draft Working Party Report:

- **What is the scope of authority and competency of the "Economic Police" in intellectual property enforcement?**
- **Do Economic Police have any specialized training in intellectual property enforcement?**
- **Are the Economic Police provided with any special resources or special police powers?**

Answer:

- According to Article 12 of Government Decree No. 12/1999/ND-CP of 6 March 1999 on handling administrative violations in the fields of industrial property, the Economic Police (the head of the District Police, the head of Economic Police Division, the Director of Provincial Police, the Director General of Economic Police Department) have the right to impose administrative remedies against acts of industrial property infringement in connection with business and production activities. According to Article 31 of Government Decree No. 31/2001/ND-CP of 26 June 2001 on handling administrative violations in the field of culture and information, the Economic Police have the right to impose administrative remedies against acts of copyright infringement in connection with public order and security.
- The draft Intellectual Property Law, available through WT/ACC/VNM/41/Add.1, (Article 203 of the 9th draft) stipulates that the police are one of competent agencies to impose administrative measures against acts of intellectual property infringement. Jurisdiction of the police as well as other enforcement agencies shall be provided in details in Government Decrees guiding the implementation of Intellectual Property Law. In order to do away with current overlap of jurisdiction, it is expected that police shall be only empowered to investigate intellectual property infringement and inform relevant agencies competent of imposing administrative remedies (for such infringements that are not serious enough to be subject to criminal prosecution) or furnish files to the competent agencies to prosecute and adjudicate crimes (for such infringements containing factors constituting crimes).
- The Economic Police receive specialized training in intellectual property enforcement through training courses on intellectual property legislation and enforcement professional skills organized regularly in Viet Nam and abroad for intellectual property enforcement agencies;
- The Economic Police has jurisdiction and resource as other police forces.

Question 296

Please identify all agencies at the municipal, provincial and national levels that have competency to act in matters of intellectual property enforcement.

Please clarify the lines of jurisdiction and authority for each of the above-named agencies, as well as their duties and responsibilities.

Answer:

The system of bodies having competency to act in matters of intellectual property enforcement and their jurisdiction and authority are as follows:

- (i) Bodies having competency to impose civil and criminal remedies (under Law of People's Court Organization 2002):
 - The civil court of the People's courts at district level has jurisdiction over intellectual property cases other than cases between businesses and foreigner-related cases;
 - The civil court of the People's courts at provincial level has jurisdiction over intellectual property cases, including cases involving a foreign element, other than cases between businesses;
 - The economic court of the People's courts at provincial level has jurisdiction over intellectual property cases between businesses; and
 - The criminal court of the People's courts at district or provincial level has jurisdiction over crimes of infringing intellectual property rights.

- (ii) Bodies having competency to impose administrative remedies (under the Ordinance on the handling of administrative violations of 2002, Government Decree No. 12/1999/ND-CP dated 6 March 1999 on handling administrative violations in the field of industrial property and Government Decree No. 31/2001/ND-CP dated 26 June 2001 on handling administrative violations in the field of culture and information):
 - The People's Committees at district or provincial levels have competency to impose administrative remedies against administrative violations regarding intellectual property that occur in the locality of their administration;
 - Market control agencies (Market control Department; Market control branch offices) have competency to impose administrative remedies and other measures against violations of provisions on industrial property right protection and violations of provisions on trade in cultural-informational products and services, which occur in any part of the country;
 - Inspectorates specialized in science and technology (Inspectorate of Ministry of Science and Technology and Inspectorates of Provincial Departments of Science and Technology) have competency to impose administrative remedies against administrative violations regarding industrial property;
 - Inspectorates specialized in culture and information (Inspectorate of Ministry of Culture and Information and Inspectorates of Provincial Departments of Culture and Information) have competency to impose administrative remedies against administrative violations regarding copyright;
 - Public security agencies (District Police; Provincial Police; Division of Economic Police, Department of Economic Police) have competency to impose administrative remedies against administrative violations regarding intellectual property in the course of production and trade; and
 - Customs agencies (Customs Department; Customs Branch Offices; Anti-smuggling Inspection Office) have competency to impose administrative remedies against administrative violations regarding intellectual property in the course of exporting and importing goods.

The principle of delimitation of competency among such agencies is as follows:

- Competency is delimited between agencies of different branches according to their fields of administration;

- Competency is delimited between agencies of different locals according to their locality of administration. People's Committees at each level handle violations of multiple fields;
- Competency is delimited between different levels in the same field or in the same locality by different administrative remedies provided for in the Ordinance on the handling of administrative violations of 2002, whereby upper level have competency to impose any remedies that lower level have and extra certain stronger; and
- The case falling under competency of different agencies shall be dealt with by the agency that receives the case first.

Question 297

Should duties or jurisdiction overlap between agencies, how do such conflicts get resolved in a timely manner, and by whom are such potential conflicts resolved?

Answer:

Under current laws and regulations, the administrative enforcement system in internal market includes four competent agencies (the People's Committees, the market control organizations, the inspectorates, the economic police), with their own different levels. The lines of jurisdiction of such agencies are not clarified and no agency assumes main responsibility for or coordinates activities of intellectual property enforcement. Such situation shall be resolved with the promulgation of Intellectual Property Law and legal instruments guiding its implementation. Particularly, Article 203.1 of the 9th draft Intellectual Property Law specified that in their scope of duties, responsibilities and jurisdiction, the courts, inspectorates, market control organization, customs, the police, and People's Committees at different levels are competent to handle infringements of intellectual property rights. The scope of duties, responsibilities and jurisdiction of each enforcement agency shall be clarified in the legal instruments guiding the implementation of Intellectual Property Law.

Question 298

What interagency communication channels are established or contemplated in facilitate government-wide coordination and information-sharing on matters of intellectual property enforcement?

Answer:

With its determination in driving back evil of intellectual property infringement, the Government of Viet Nam is currently building and preparing to implement "Project on enhancement of intellectual property enforcement efficiency" including plans of establishing a system for ensuring intellectual property information and providing expertise as assistance for agencies in carrying out the task of investigation, control and handling of violations; establishing intellectual property information channels in order to maintain a regular communication relationship between enforcement agencies; building forums to provide and exchange information, experience in application of remedies, modes of infringement; supervising, making statistics and general assessment of the intellectual property infringement situation to ensure a close, combined and prompt coordination between enforcement agencies.

Question 299

Does the Government of Viet Nam have any quantifiable basis for determining that administrative agency enforcement of intellectual property disputes is an effective enforcement mechanism?

Answer:

Up to present, the inspectorates, market control organizations, economic police and customs offices have handled thousands of intellectual property infringement cases.

- From January 2001 to June 2003, the market control organizations in nation-wide handled around 1,500 cases of intellectual property infringing goods (mainly related to trademarks and industrial designs). In 2003 and 2004, those organizations in coordination with other competent agencies handled hundreds of cases of trading and storage of pirated copyright products.
- From 1999 to 2003, the Science and Technology Inspectorate in nation-wide handled administratively 252 business bases, of which 111 and 141 business bases were subject to monetary fines up to 750 million Dong and warnings respectively. From 1996 to the first quarter of 2004, the Culture and Information Inspectorate in nation-wide carried out 746,307 times of inspection on culture and information matters, discovered 166,887 cases of infringement, transferred 788 cases to criminal prosecution, seized 1,701,074 video tapes, 1,270,503 CDs, VCDs, DVDs, 751,616 cultural publications, 4,133 transceivers, television sets, suspended business activities of 7,970 establishments and fined up to 120 million Dong.
- In the recent years, the economic police have strongly engaged in actions against smuggling, production and trading of counterfeits and intellectual property infringement. The economic police have actively assisted other administrative offices in inspecting and discovering and combating infringement of trademarks, industrial designs, and film or music piracy, etc.
- From 1999 to 2003, the customs handled around 400 cases of intellectual property infringing imports and exports.

In comparison with number of cases resolved in courts, administrative enforcement system has played an important role in preventing and handling intellectual property infringement.

Question 300

If the Government of Viet Nam is now relying more on civil damages as a compensatory remedy in intellectual property infringement cases, what measures have been implemented to make the civil judicial system more effective and accessible to the intellectual property rights holder?

Answer:

In the recent years, Viet Nam has increasingly attached much importance to strengthening the system of judicial agencies, especially civil courts, in order to make civil procedures become the essential and most important measure in intellectual property enforcement system. With assistance of the United States of America, Switzerland, EU, Japan, etc, Viet Nam has many judges received short-term intellectual property training courses, making a considerable contribution to its target at training judges specialized in the field of intellectual property.

The draft Intellectual property Law has a separate chapter providing for the judgment of intellectual property infringement by civil procedures, including provisions on burden of proof, remedies, principle for calculation of damage and compensation and provisional measures.

Question 301

The following questions refer to paragraph 422 of the Working Party Report:

- **What was the rationale for abolishing administrative damages in 2002?**
- **Is it only compensatory administrative damages that have been abolished?**

Answer:

The Ordinance on the handling of administrative violations of 2002 abolished the remedy of award damages (and no other remedy) stipulated in the 1994 Ordinance because award damage is a civil remedy, not covered by law on administrative violations handling. The remedy of award damages are provided for in the 2005 Civil Code and also included in draft Intellectual Property Law.

Question 302

Are administrative fines still imposed by administrative agencies in intellectual property infringement disputes?

If so, are they sufficient to act as a deterrent to future infringements?

How are administrative fines calculated?

Do different agencies calculate them differently or is there a government-wide standard for their calculation?

Answer:

Pursuant to the 2002 Ordinance on the handling of administrative violations, monetary fine is one of two main administrative measures against violations. Administrative measures in general are of a strong deterrent for intellectual property infringing organizations, individuals, as they shall be subject to criminal prosecution if repeat the infringement.

Under Article 3.1 of Government Decree No. 12/1999/ND-CP of 6 March 1999 on handling administrative violations in the industrial property fields, the imposition of a fine shall depend on the essence and gravity of the violation and determined within the frame of monetary fines. Where there are extenuating elements, a lower fine upon the minimum level shall be imposed. As for a violation with aggravating elements, a higher fine up to the maximum level shall be imposed.

Under Article 5.2 of Government Decree No. 31/2001/ND-CP of 26 June 2001 on handling administrative violations in the field of culture and information, specific monetary fine for an act of administrative violation is the average level in the frame of monetary fines for such act. Where there are extenuating elements, a fine between the minimum and the average level shall be imposed. As for a violation with aggravating elements, a fine between the average and the maximum level shall be imposed.

The two Decrees specify only the principle that monetary fines must correspond with the essence and gravity of the violations, therefore factual inconsistency between administrative enforcement agencies while handling a same violation is unavoidable. In order to overcome this disadvantage, draft Intellectual Property Law (Article 217.4 of the 9th draft) provides for monetary fines: "The monetary fine rates shall be at least equal to, and not exceed five times of, the value of the discovered infringing goods". Detailed provisions on intellectual property infringing acts subject to administrative remedies, modes and levels of remedies applicable to each of such acts shall be included in the legal instruments guiding the implementation of Intellectual Property Law.

Question 303

What is the role of administrative agencies in intellectual property enforcement since administrative damages have been abolished?

Answer:

The role and capacity of administrative agencies in intellectual property enforcement remain unchanged with the abolishment of award of damages. According to the provisions in the 1994 Ordinance on the handling of administrative violations, administrative agencies had only authority to award damages up to one million Dongs. Such provision was just to help the damaged party to avoid initiating legal proceedings before the court in the case of unremarkable damages.

Question 304

How has the administrative system been "strengthened" when administrative remedies have been removed?

Answer:

The role and capacity of administrative agencies in intellectual property enforcement remain unchanged with the abolishment of award of damages. According to the provisions in the 1994 Ordinance on the handling of administrative violations, administrative agencies had only authority to award damages up to 1 million Dongs. Such provision was just to help the damaged party to avoid initiating legal proceedings before the court in the case of unremarkable damages.

Question 305

Does the Government of Viet Nam intend to build capacity of law enforcement personnel in the investigation and prosecution of intellectual property enforcement?

Answer:

In the recent years, building capacity of intellectual property enforcement personnel, including officials in charge of investigation (the economic police and prosecutors) has been one of measures focused by the Vietnamese Government with a view to further improving the efficiency of intellectual property enforcement system. This view has also been expressed in the draft Intellectual Property Law (Article 8.4 of the 9th Draft), under which the State shall undertake preferential policy for training, fostering personnel and others concerned in the field of intellectual property.

Question 306

Referring to paragraph 432 of the Working Party Report, is it legally permissible for an infringer to be prosecuted for both administrative remedies and criminal penalties in connection with the same intellectual property infringement?

Answer:

Under the Government Decree No. 12/1999/ND-CP of 6 March 1999 on handling administrative violations in the industrial property fields (article 2.2) and the Government Decree No. 31/2001/ND-CP of 26 June 2001 on handling administrative violations in the field of culture and information (Article 1.1), administrative measures against violations in the intellectual property field shall apply only to acts not serious enough to be subject to criminal prosecution. Under the 1999 Criminal Code, any person who engaged in an act with factors constituting a crime or who repeated an act after having been dealt with administratively shall be considered a crime and criminally prosecuted. Thus, in connection with an act of intellectual property infringement, depending on its nature and gravity, infringer could be subject to either administrative remedies or criminal penalties,

rather than to both remedies simultaneously. This principle has also been expressed in the draft Intellectual Property Law.

VI. POLICIES AFFECTING TRADE IN SERVICES

Question 307

We welcome Viet Nam's response to Question 21 of WT/ACC/VNM/38, and seek its full inclusion in this section of the revised draft Working Party report (paragraph 441 of the Draft Report does not include the reference to the provisions being "designed to ensure the rights and obligations of telecommunications providers to access to and use of public telecommunication transport networks of each other").

Answer:

Viet Nam agrees to include in the paragraph 441 of the revised Draft Report the recommended reference "designed to ensure the rights and obligations of telecommunications providers to access to and use of public telecommunication transport networks of each other".

Question 308

We also seek greater clarification in the draft Working Party report on how the Ordinance on Posts and Telecommunications (as well as measures implementing it) provides for non-discrimination of access and use of public telecommunications transport networks.

Answer:

To ensure the non-discrimination access and use of telecommunication transport networks, Article 43.2 of the Ordinance on Posts and Telecommunications (the Ordinance) provides three main points:

- a public telecommunication service provider has the right to interconnect with the network of the public telecommunications service providers, and, vice versa, it has the obligation to allow other public telecommunications service providers to interconnect with its own network with equitable and reasonable conditions;
- the incumbent public telecommunication service provider must not refuse the request by other public telecommunications service providers for interconnection with its networks; and
- the process and procedures of negotiating, signing the Agreement, and dispute settlement on interconnection are defined by the regulator.

In addition, the Decree detailing measures implementing the Ordinance provides further details on the process and interconnection dispute settlement (Article 60, Chapter X).

Question 309

Please provide further detail about the distinction between branch offices and representative offices as forms of commercial presence (note that this issue is not the subject of direct comment in the draft Working Party report).

Answer:

Representative office is a subordinate unit of the foreign enterprises, established under the Vietnamese law in order to seek, promote trade and tourism opportunities but is not allowed to engage in any direct profit-making activities.

Article 13, Decree No. 45/2000/ND-CP on scope of operation of foreign representatives of foreign traders, and foreign tourism enterprises:

- (i) To proceed with the formation of economic, commercial and tourism co-operation projects in Vietnam;
- (ii) To explore and promote opportunities for the purchase and sale of goods and the provision of commercial and tourist services in Vietnam; and
- (iii) To monitor and supervise the implementation of contracts executed by the foreign trader or foreign tourism enterprise which it represents.

Branch is a dependent unit of a foreign enterprise, which is established under the laws of Viet Nam, in areas allowed by Viet Nam's laws, for the purpose of engaging in activities in Viet Nam in order to directly generate profits.

Article 13, Decree No. 45/2000/ND-CP also stipulates that the scope of operations of a branch shall be stipulated specifically in the Licence for the establishment of the branch, which shall be consistent with the scope of operations of the relevant foreign trader or foreign tourism enterprise and be within the scope of Viet Nam's laws.

Decree No. 45/2000/ND-CP also stipulates that a foreign trader or foreign tourism enterprise which has a representative office [and/or] a branch in Viet Nam is responsible before the laws of Viet Nam for all activities of its representative offices [and/or] branches in Viet Nam.

Question 310

Paragraph 440 - In terms of qualifications recognition, please explain in detail how a foreign (i) architect (ii) planner would seek recognition of their qualifications in Viet Nam.

Answer:

According to the Decree No. 16/2005/ND-CP dated 7 February 2005 of the Government on Management of Construction Investment Project and the Decision No. 15/2005/QD-BXD of the Minister of Construction on Promulgation of Regulations on Granting Architect Practicing Certificate and Engineer Practicing Certificate, a foreign architect can practice architectural design and/or planning design with a professional practicing certificate granted or recognized by relevant Vietnamese authorities.

- (i) A foreign architect who wants to have a Practicing Certificate granted by the Vietnamese authority is required to meet following requirements:
 - being eligible for civil rights and having mental capacity for civil behaviour in accordance with the Law;
 - having completed a degree in planning or architecture at the university level or higher given by a recognized Vietnamese/overseas university or other competent institutions;

- having acquired practical experience of not less than five years after graduation and having participated in planning and/or architectural design work of not less than five projects; and
 - being of good conduct (having no record of professional negligence).
- (ii) If foreign architect has a Practicing Certificate granted by foreign competent body/organization, his/her Practicing Certificate shall be considered to be recognized by the Vietnamese authority. Upon the recognition, this foreign architect is allowed to practice in Viet Nam in accordance with professional qualifications and requirements under Vietnamese laws and regulations.
- (iii) Foreign architect can also practice architectural design and/or planning design in Viet Nam through bilateral/multilateral Mutual Recognition Agreements (MRAs) on professional qualifications in which the Vietnamese Government has signed to participate.

Question 311

Paragraph 446: We would be grateful if Viet Nam could explain how service sectors come to be classified as (i) not available for foreign investment altogether; (ii) available for foreign investment subject to a Joint Venture requirement. How does this classification change?

Answer:

This issue has been clearly explained in our bilateral market access negotiations. Viet Nam shall fully comply with GATS as well as our Schedule of specific commitments in services upon the accession to the WTO.

Question 312

On 25 August 2005, the Ministry of Posts and Telematics introduced measures to set a price floor for international calls into Viet Nam and a system for allocating calls by quota among six Vietnamese carriers. Neither of these measures appears to be consistent with WTO commitments Viet Nam has offered to make. The measures are Decision No. 8/2005/QĐ-BBCVT and Official Letter No. 1683/BBCVT-KHTC.

- Can Viet Nam confirm that these measures will be eliminated prior to accession to the WTO?
- We note that in paragraph 457 of the draft Working Party Report that Viet Nam advised the Working Party that "official letters" are not recognized as legal normative documents. If that so, please explain how can Official Letter No. 1683/BBCVT-KHTC set a price floor or establish a system for allocating calls by quota?

These measures were put into force without advance notice to and comment by affected commercial entities, and the measures were made retroactive to 1 August 2005.

- Please confirm that any future measures of this sort will be subject to advance notice and comment procedures as described to the Working Party in paragraphs 456-458 of the draft Working Party Report?

These measures also appear inconsistent with Viet Nam's own competition policies as described in paragraphs 88-93 of the draft Working Party Report.

- How does Viet Nam explain this inconsistency?

Answer:

Viet Nam confirms that these measures will be eliminated prior to accession to the WTO.

The Official Letter No. 1683/BBCVT-KHTC details the policy on quota set in the Article 2.1 of the Decision No. 29/2005/QDD-BBCVT: the Article 2.1 states that the Ministry of Post and Telecommunication shall decide the inbound VoIP traffic allocation for telecommunication service providers on the periodical basis. Following this decision, the Official Letter No. 1683/BBCVT-KHTC provides detailed traffic allocation applied since August 2005. This letter is also published in the Ministry of Post and Telecommunication (MPT) website.

The traffic allocation provided in the Official Letter No.1683/BBCVT-KHTC has been agreed upon and submitted to the MPT beforehand by six VoIP providers. Since this allocation is applied on periodical basis, some providers can fall into temporary unfavourable conditions as business environment changes too fast. However, these providers can meet periodically to discuss and come up with new allocation.

The measures set in the Official Letter No. 1683/BBCVT-KHTC is one of the measures to facilitate competition in the initial stage of market development: by limiting the traffic of traditional service providers, new providers will gain more traffic to develop their business, thus fostering the competition of the whole market. On the other hand, this measure is taken on the basis of consensus of the providers.

VII. TRANSPARENCY

Question 313

This section positively reflects recent hard work on its contents. We look forward to the responses to our questions in the previous section that pertain to this section. We may have further comments or questions after thoroughly reviewing the new legislation provided.

Answer:

We note the hard work of Members and have also been working hard to increase the transparency of the information on trade.

We in principle agree that Viet Nam shall make available to the public, including through a website, the drafts of legal normative documents of general application to trade in the areas covered by the WTO Agreement, except in cases of emergency or such publication is detrimental to the implementation of such legal normative documents.

We have also committed to implement, as from the date of accession, Article X of the GATT 1994, Article III of the GATS and other WTO transparency requirements, including those requiring notification, prior comment and publication.

We, however, have not fully comprehended the far-reaching suggestion and questions in the previous section. For example, there has been no citation of the WTO's appropriate rules where the suggestion was based. Therefore, we would appreciate further clarification in the context of the Working Party on this section.

Question 314

We request that Viet Nam remove the brackets from the commitment language.

Answer:

Viet Nam is committed to implement all WTO rules relating to transparency and is willing to discuss a commitment language in that line.

VIII. TRADE AGREEMENTS

Question 315

This section has improved considerably.

Answer:

We would like to thank for the comment.

Question 316

We thank Viet Nam for accepting the commitment language.

Answer:

We would like to thank for the comment.

Question 317

In the interest of transparency, we would appreciate Viet Nam's description in the text of the Working Party report of the goods market access and services commitments it has made as part of the ASEAN – China Free Trade Agreement.

Answer:

A description of Viet Nam's commitments under the ASEAN-China FTA will be provided as soon as all the details are finalized and the Agreement comes into force.

ANNEX I

Illustrative List of Conditional Business Lines

I. List of Conditional Business Lines and Respective Business Conditions

No.	Business lines	Legislation	Business conditions
1	Conducting business in fresh, raw and processed food	<ul style="list-style-type: none"> - Decree No. 11/1999/ND-CP dated 3 March 1999 of the Government. - Circular No. 16/1999/TT-BTM dated 15 June 1999 of the Ministry of Trade providing guidance on conditions for buying, selling and transporting fresh, raw and processed foods. 	<p>1. Condition on subject of the business</p> <p>A trader is required to have the Certification of Business Registration which stipulates buying, selling or conducting the transport service of fresh, raw and processed food as one of the trader's business lines.</p> <p>2. Conditions on material and technical establishment and equipment:</p> <p>2.1 Requirements on place of doing business:</p> <ul style="list-style-type: none"> - The place of doing business must be stable and conform to the arrangement of the local common trading network; - The buying and selling place must be at least 50 meters away from the public conveniences, garbage dumps, dusty places of production and hospitals. <p>2.2 Minimum requirements on material establishments and equipment:</p> <ul style="list-style-type: none"> - Traders dealing in food must have necessary instruments such as verified scales, tanks and trays, tables (stalls or stands), knives, chopping blocs... The places for processing and selling food must have necessary instruments for processing and maintenance and covers to ensure hygiene and quality of food after processing; - Traders engaged in the transportation of food must have appropriate means of transport to ensure safety and quality of products during the transportation. <p>3. Conditions on environment:</p> <ul style="list-style-type: none"> - A hygienic drainage system for wastewater is required; - Covered pails and baskets for garbage and waste are required. <p>4. Conditions on health:</p> <p>Processors and salesperson must be in appropriate health condition to the business as stipulated by the Ministry of Health, and free from infectious diseases and must have a health check every 12 months.</p>

No.	Business lines	Legislation	Business conditions
2	Conducting business in pawnage service	<ul style="list-style-type: none"> - Decree No. 11/1999/ND-CP dated 3 March 1999 of the Government. - Circular No. 18/1999/TT-BTM dated 19 May 1999 of the Ministry of Trade guiding pawnage service business. 	<ol style="list-style-type: none"> 1. A trader must have the Certification of Business Registration which stipulates pawnage service as one of his/her business lines. 2. The trader must have a fixed pawnshop with definite address; have warehouses for keeping and preserving the pawned goods and property safely against damage or loss thereof during the time of keeping.
3	Conducting business in restaurant and popular food-and-drink stall	<ul style="list-style-type: none"> - Decree No. 11/1999/ND-CP dated 3 March 1999 of the Government. - Circular No. 13/1999/TT-BTM dated 19 May 1999 guiding conditions for restaurant and popular food-and-drink stall business. 	<p>Condition on subject of the business:</p> <p>A trader must have Certification of Business Registration, which stipulates restaurant, and popular food-and-drink stall business as one of his/her business lines.</p> <p>Conditions on material and technical establishment and equipment:</p> <p>Requirements on place of doing business:</p> <ul style="list-style-type: none"> - The place of doing business must be stable and be legitimately used; - The place of doing business must be at least 100 meters away from the public conveniences, garbage dumps, and dusty places of production that may cause infectious diseases. <p>Minimum requirements on material establishments and equipment:</p> <ul style="list-style-type: none"> - Restaurants must conform to the requirements specified in Appendix 1 of Circular No. 18/1999/TT-BTM; - Popular food-and-drink stalls must conform to the requirements specified in Appendix 2 of Circular No. 18/1999/TT-BTM. <p>Conditions on environmental protection and fire prevention and fighting:</p> <ul style="list-style-type: none"> - There must be a hygienic drainage system for wastewater; - There must be covered pails and baskets for garbage and waste; - They must have minimum equipments to ensure the safety in terms of fire prevention and fighting. <p>Conditions on health:</p> <p>Those who work in restaurants and popular food-and-drink stalls must have the health condition suited to the business as stipulated by the Ministry of Health. Before being recruited, they must have a health check, and then do it again every 12 months to ensure being free from infectious diseases.</p>

- Note:
1. Traders who deal in business lines of above-mentioned list must not have the Certificate of Competence in Doing Business.
 2. Traders must fully meet the above-mentioned business conditions before and during their business operation. If there is any violation, the trader shall be penalized as regulated by law.

II. List of Business Lines Which Are Required Business License

No.	Business lines	Legal framework	Conditions to be considered and granted Business license	Authorized bodies issuing Business license	Procedure
I. Restricted business lines					
1	Liquor trading	<ul style="list-style-type: none"> - Decree No. 11/1999/ND-CP dated 3 March 1999 of the Government. - Circular No. 12/1999/TT-BTM dated 19 May 1999 guiding the liquor trading. 	<p>Traders who fully meet the following conditions shall be considered and granted liquor trading licenses:</p> <ol style="list-style-type: none"> 1. They must have Certification of Business Registration (clearly stating goods range and business lines and trades that cover liquor items); 2. They must have fixed trading places and identified addresses; 3. They must ensure the environmental hygiene at the liquor trading places. 	The provincial or municipal Trade Services/Trade Departments.	<ol style="list-style-type: none"> 1. The dossier comprises: <ul style="list-style-type: none"> - An application for liquor trading licence (complying with the sample in Circular No. 12/1999/TT-BTM); - The valid copy of the Certification of Business Registration - The documents on liquor trading places and environmental hygiene; - The list of liquors to be traded and sources from which such liquors can be purchased. <p>Within 15 days after receiving complete and valid dossiers, the provincial/municipal Trade Services/ Trade Departments shall decide the granting or non-granting of liquor trading licenses to such traders.</p>
2	Cigarette trading	<ul style="list-style-type: none"> - Decree No. 11/1999/ND-CP dated 3 March 1999 of the Government. - Decree No. 76/1999/ND-CP dated 22 October 2003 of the Government. - Circular No. 30/1999/TT-BTM guiding the trading in home-made cigarettes. 	<ol style="list-style-type: none"> 1. Requirements concerning traders who purchase cigarettes from cigarette business and production enterprises for organizing the cigarette circulation and consumption on the market: <ul style="list-style-type: none"> - They must be enterprises established according to the provisions of law and have the Certification of Business Registration stating that cigarette is a goods included in their business lines; - They are financially capable of trading in cigarettes; - They own stable cigarette distribution and consumption outlets in their business localities. 	<ol style="list-style-type: none"> 1. Ministry of Trade has authority to grant Business Licence to traders who deal in cigarettes in two or more provinces and/or cities. 2. The provincial /municipal Trade Services/Trade Departments has authority to grant Business licence to traders who deal in cigarettes in only one province or city. 	<p>The dossier comprises:</p> <ul style="list-style-type: none"> - An application for permission to purchase cigarettes from cigarette business and production enterprises. - A valid copy of the Certification of Business Registration. - The clearly and fully cigarette trading plan specified in Circular No. 30/1999/TT-BTM.

No.	Business lines	Legal framework	Conditions to be considered and granted Business license	Authorized bodies issuing Business license	Procedure
			<p>2. Provisions on cigarette retail/wholesale and retail/wholesale agency.</p> <p>2.1 Wholesale businesses of cigarette:</p> <ul style="list-style-type: none"> - They must be enterprises established according to the provisions of law and have the Certification of Business Registration stating that cigarette is a goods item included in their business lines; - They must have a fixed trading place with a clear address; - They must have a cigarette distribution and consumption outlets; - They must comply with regulations on environmental protection and fire prevention and fighting. <p>2.2 Retail businesses of cigarette:</p> <ul style="list-style-type: none"> - Traders must have the Certification of Business Registration which state that cigarette is a goods item included in their business lines; - They must have separate and fixed business places or stalls with clear addresses for retailing cigarettes to consumers for cigarette retail or retail agency according to the provisions of this Circular. 	<p>The provincial/municipal Trade Services/Trade Departments grant Business licenses to wholesale/ retail cigarettes.</p>	<p>The dossier comprises:</p> <ul style="list-style-type: none"> - An application cigarette trading licence (complying with the sample in Circular No. 30/1999/TT-BTM); - A valid copy of the Certification of Business Registration; - A cigarette trading plan with some principal contents (In case of wholesale businesses of cigarette); - Within 15 days after receiving complete and valid dossiers, the provincial/municipal Trade Services/ Trade Departments shall decide the granting or non-granting of cigarette trading licenses to such traders.

No.	Business lines	Legal framework	Conditions to be considered and granted Business license	Authorized bodies issuing Business license	Procedure
II. Conditional business lines					
1	Trading in oil and petrol	<ul style="list-style-type: none"> - Decree No. 11/1999/ND-CP dated 3 March 1999 of the Government. - Circular No. 14/1999/TT-BTM dated 7 July 1999. - Decision 187/2003/QD-Ttg. 	<ol style="list-style-type: none"> 1. Subject of the business: <ul style="list-style-type: none"> - He/she must be a trader with the Certification of Business Registration which stipulates trading in oil and petrol as one of his/her business lines; - As to traders who deal in oil and petrol wholesale, warehouses, ports, parking place, they must be enterprises established according to the provisions of law. 2. Conditions on material and technical establishment and equipments and other related conditions must comply with the requirements stipulated in Circular No. 14/1999/TT-BTM. 	The provincial/municipal Trade Services/Trade Departments	<ol style="list-style-type: none"> 1. The dossier comprises: <ul style="list-style-type: none"> - An application for the Certificate of competence in oil and petrol trading (complying with the sample in Circular No. 14/1999/TT-BTM); - A valid copy of the Certification of Business Registration which stipulates trading in oil and petrol as one of his/her business lines; - Certificate of oil and petrol trading locations (including retail stores, warehouses; ports, parking place..) issued by authorized bodies; <ul style="list-style-type: none"> - A valid copy of Certificate of fire security issued by city police - A valid copy of Certificate of environment sanitation issued by Science, Technology and Environment Office. 2. Within 15 days after receiving complete and valid dossiers, the provincial/municipal Trade Services/ Trade Departments shall decide the granting or non-granting of Certificate of competence in oil and petrol business to such traders.

No.	Business lines	Legal framework	Conditions to be considered and granted Business license	Authorized bodies issuing Business license	Procedure
2	Gas trading	<ul style="list-style-type: none"> - Decree No. 11/1999/ND-CP dated 3 March 1999 of the Government. - Circular No. 15/1999/TT-BTM 19 May 1999. 	<p>1. Conditions on gas storehouses:</p> <p>Gas storehouses must comply with the specific requirements stipulated in Circular No. 15/1999/TT-BTM:</p> <ul style="list-style-type: none"> - Conditions on subject of the business; - Conditions on material and technical establishment and equipment; - Condition on educational level of employees; - Condition on health; - Condition on fire prevention and fighting. <p>2. Conditions for warehouse service maintaining gas-tank:</p> <ul style="list-style-type: none"> - As 5 above-mentioned conditions in Item 1. - As to conditions on material and technical establishment and equipment, they must comply with the requirements stipulated in Section 5.6, Items 5, Viet Nam Standard – TCVN 6223:1996 (Appendix 2 of Circular No. 15/1999/TT-BTM) 	The provincial/municipal Trade Services/Trade Departments.	<p>1. The dossier comprises:</p> <ul style="list-style-type: none"> - An application for the Certificate of competence in gas trading (complying with the sample in Circular No. 15/1999/TT-BTM); - A valid copy of the Certification of Business Registration; - A valid copy of Certificate of fire security. <p>2.2 Within 15 days after receiving complete and valid dossiers, the provincial/municipal Trade Services/Trade Departments shall decide the granting or non-granting of Certificate of competence in gas trading to such traders.</p>

Note: Valid time-limit of Business license, Certificate of competence in doing business of 4-above-mentioned fields shall be expired within three years from the issuing day. (As stipulated in Announcement No. 5603/TM-CSTNTN, dated 9 November 1999).

ANNEX II

Commitments On Trading Rights

(Attached to the Questions and Answers)

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, enterprises with foreign-invested capital shall be allowed to be importers/exporters of record and shall:
 - be entitled to import and export all kinds of goods, except for those subject to state trading enterprises (as listed in the attached Table 3) and the restrictions listed in the attached Tables 1 and 2; and
 - register their business lines with the relevant State's registration agencies.
3. The registration procedures for enterprises with foreign-invested capital to engage in import and export activities shall in no case be made more restrictive than those applied to domestic enterprises.
4. Not later than 1 January 2007, subject to Vietnam's applicable laws and regulations, foreign enterprises shall be allowed to establish branches in Viet Nam to engage in import and export activities as importers/exporters of record. These branches shall also be subject to the provisions specified in paragraphs 2 and 3 above.
5. Not later than 1 January 2007, foreign individuals shall be granted trading rights no less favourable than those applied to Vietnamese individuals.
6. The trading rights referred herein shall only accord the right to be the importer/exporter of record and, in the case of importation, shall only accord the right to import and sell the imported products to enterprises who have the right to distribute such products in Viet Nam. Commitments on trading rights shall not, in any case, 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.
7. The trading rights referred herein shall in no case affect the rights of the Government of Viet Nam to:
 - adopt or enforce requirements for customs and fiscal purposes; and
 - adopt or enforce regulations with respect to the importation, exportation, re-importation, re-exportation, and transit of goods in consistence with relevant provisions of the WTO Agreements and with Viet Nam's commitments upon accession to the WTO, such as those relating to import licensing, state trading, TBT and SPS.

TABLE 1:
SCHEDULE OF COMMITMENTS ON IMPORT TRADING RIGHTS
(Attached to Annex on Commitments on Trading Rights)

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

HS	Description	Schedule	Rationale
	<i>Pharmaceutical products</i>		
3003	Medicaments nesoi of mixtures, not dosage etc form...	2009	Essential to human life
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	ditto
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		
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		

HS	Description	Schedule	Rationale
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		
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)		

HS	Description	Schedule	Rationale
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 (Guafenesin)		
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	ditto
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>		
3706	Motion-picture film, exposed and developed...	2009	Sensitive to public morals
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	ditto
4907.00. 10	- Banknotes, being legal tender		
4907.00. 20	- Unused postage stamps		

HS	Description	Schedule	Rationale
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	ditto
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	ditto
4910.00. 00	Calendars of any kind, printed, including calendar blocks.		
4911	Printed matter nesoi, incl print pictures & photos...	2009	ditto
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		
4911.99. 90	- - - Other		
	<i>Industrial printers</i>		
8442	Machinery etc nesoi for type-setting, making printing plates etc...	2009	Sensitive to public order
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	ditto
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		

HS	Description	Schedule	Rationale
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	Sensitive to national security
8525.10. 10	- - For radio-broadcasting		
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	ditto
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 2
SCHEDULE OF COMMITMENTS ON EXPORT TRADING RIGHTS
(Attached to Annex on Commitments on Trading Rights)

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

HS	Description	Schedule	Rationale
	<i>Cereals</i>		
1006	Rice	2011	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 3:

List of Goods Subject to State Trading Enterprises

No	HS	Description	Rationale
1.	2402	Cigars, cheroots, cigarillos and cigarettes...	Both domestic production and consumption are restricted.
	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	
2.	2709	Crude oil from petroleum and bituminous minerals...	Natural monopoly
	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, reformat 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	

No	HS	Description	Rationale
	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	
	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	
3.	4902	Newspapers, journals & periodicals...	Cultural products affecting to society morals
	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	
4.	8524	Records, tapes and other recorded media for sound or ... excluding 852410, 852431, 852432, 85243910, 85244000, 852491, 85249920	Cultural products affecting to society morals
	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	
5.	8802	Other aircraft (for example, helicopters, aeroplanes); spacecraft (including satellites) and suborbital and spacecraft launch vehicles.	Natural monopoly
	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	

No	HS	Description	Rationale
	8802. 40. 10	- - Aeroplanes	
	8802. 40. 90	- - Other	
	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 balloons, gliders or kites	
	8803. 90. 90	- - Other	

ANNEX III

Table 11(b)

11(b.1) SCHEDULED CHEMICALS

SCHEDULE 1

No.	Name of Chemical	CAS Registry number	HS
Toxic Chemicals			
1	O-Alkyl ($\leq C_{10}$, incl. cycloalkyl) alkyl (Me, Et, n-Pr or i-Pr)-phosphonofluoridates E.g. Sarin: O-Isopropylmethylphosphonofluoridate Soman: O-Pinacolyl methylphosphonofluoridate	107-44-8 96-64-0	2931.00
2	O-Alkyl ($\leq C_{10}$, 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
3	O-Alkyl (H or $\leq C_{10}$, incl. cycloalkyl) S-2-dialkyl (Me, Et, n-Pr or i-Pr)-aminoethyl alkyl (Me, Et, n-Pr or i-Pr) phosphonothiolates and salt corresponding alkylated or protonated salts e.g. VX: O-Ethyl S-2-diisopropylaminoethyl methyl phosphonothiolate	50782-69-9	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
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
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 2930.90
7	Saxitoxin	35523-89-8	3002.90
8	Ricin	9009-86-3	3002.90
Precursors			
9	Alkyl (Me, Et, n-Pr or i-Pr) phosphonyldifluorides e.g. DF: Methylphosphonyldifluoride	676-99-3	
10	O-Alkyl (H or $\leq C_{10}$, 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
11	Chlorosarin: O-Isopropyl methylphosphonochloridate	1445-76-7	2931.00
12	Chlorosoman: O-Pinacolyl methylphosphonochloridate	7040-57-5	2931.00

SCHEDULE 2

Toxic chemicals			
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	2933.90
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: O-Ethyl S-phenyl ethylphosphonothiothionate	676-97-1 756-79-6 944-22-9	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	2905.14

SCHEDULE 3

	Toxic chemicals		
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
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	2921.19
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

11(b.2): Import allowed conditionally –

Toxic Chemicals and Products Containing Toxic Chemicals

No.	Name of chemicals	Formula	Concentration
1	Acetonitril	CH ₃ -CN	
2*	Anilin	C ₆ H ₇ -N	
3*	Benzene	C ₆ H ₆	
4	Choloroform	CHCl ₃	
5*	Furfurool	C ₅ H ₄ O ₂	
6	n-Hexan	CH ₃ (CH ₂) ₄ CH ₃	
7	Piridin	C ₅ H ₅ N	
8	Carbon tetra chloro	CCl ₄	
9*	Tuluen	C ₇ H ₈	
10*	Ethylen Glycol	CH ₂ OH-CH ₂ OH	
11*	n-Butanol	CH ₃ (CH ₂) ₂ CH ₂ OH	
12*	Aldehyd acetic	CH ₃ CHO	
13*	IsoPropanol	CH ₃ CHOHCH ₃	
14*	Asbestos raw material		
15*	Selen and selen compounds	Se	
16*	Cadmium and cadmium compounds	Cd	
17	Thallium	Tl	
18*	Xylen	C ₆ H ₄ (CH ₃) ₂	
19*	Acid Pechloric	HClO ₄	
20	Acrolein	CH ₂ =CH-CHO	+0.002
21*	Amoniac	NH ₃ NH ₄ OH	+0.002
22	Anhydric ascenio and anhydrit ascenic (asen pentoxide)	As ₂ O ₃ As ₂ O ₅	+0.0003
23	Ascenua hydrogen	AsH ₃	+0.0003
24*	Anhydrit carbonic	CO ₂	0.1 per cent mg/l
25*	Anhydrit cromic	CrO ₃	0.0001 mg/l
26*	Anilin	C ₆ H ₅ -NH ₂	0.005
27*	Antimony	Sb	0.0005
28*	Hydrochloric acid and hydrochlorua (calculated as hydrochlorua)	HCl	0.010
29*	Acid nitric (calculated as N ₂ O ₅)	HNO ₃	0.005
30*	Acid acetic	CH ₃ COOH	0.005
31	Cyanhydric calculated as HCN		
32*	Acid sulfuric and anhydrit sulfuric	H ₂ SO ₄	0.002
33*	Acid phosphoric	H ₃ PO ₄	
34*	Acid picric	C ₆ H ₃ K ₈ O ₇	
35*	Bary oxide containing 10 per cent free SiO ₂	BaO	0.005
36*	Bary + dissolvable compound	(Ba)	
37*	Benzidin	C ₁₂ H ₂₂ N ₂	0.001
38*	Brom	Br ₂	1 ml/m ³
39*	Bromua metyl	Br-CH ₃	10 ml/m ³
40*	Bromofoc	CHBr ₃	
41*	Bicromat alkali	Cr ₂ O ₇ -(NaK)	0.0001
42*	Lead and inorganic compounds of lead	Pb	0.00001 0.0001
43*	Chlorine	Cl ₂	0.050
44*	Chlorinebenzene	C ₆ H ₅ Cl	0.001
45	Chlorinediphenyl		0.0005
46	Chlorine oxydiphonyl		0.001
47	Chlorinenaphtaline (trichlorinenaphtalin)	C ₁₀ H ₇ Cl	0.005
48	High level tetra and pentanaphtalin mixture		

No.	Name of chemicals	Formula	Concentration
49	Chlorineropren	$\text{CH}_2=\text{CH}-\text{CCl}=\text{OH}_2$	0.002
50	Chlorinepycrin	CC_3NO_2	20 mg/m ³ 60 mg/m ³
51*	Limestone chlorinerua (calculating as Cl)	CaCl_2	0.001
52*	Metylic spirit	CH_3OH	0.050
53*	Dimetyl amin	$(\text{CH}_3)_2\text{NH}$	0.001
54	Dimetyl focmanit	$\text{CH}_3\text{HCO}-\text{N} < \text{CH}_3$	0.001
55	Dichlorinebenzene	$\text{C}_6\text{H}_4\text{Cl}_2$	
56	Dinitrochlorinebenzene	$(\text{NO}_2)_2\text{C}_6\text{H}_3 < \text{Cl}$	0.001
57	Dinitrotoluen	$(\text{NO}_2)_2\text{C}_6\text{H}_3-\text{CH}_3$	0.001
58	Dinitrobenzene and identicals		
59	Dioxide Chlorine	ClO_2	0.0001
60*	Copper (salt)		0.00005
61	Etyl mercury phosphate		0.00005
62*	Focmaldehyt	HCHO	0.005
63	Etyl mercury chlorinerua		
64*	Florua hydrogen	FH	0.0005
65	Salt of acid flohydric (calculating as HF)	FH	0.0005
66	Salt of acid flohydric (calculating as HF)		0.001
67	Florosilicat metal dissolved and undissolved		
68	Hexachlorinero cychlorinehexan		0.00005
69*	Isome (gamma)		
70	Hydrazin and derivatives		0.0001
71	Isopropylnitrat	$\text{C}_3\text{H}_7\text{NO}_2$	0.005
72*	NaOH gas, KOH gas		
73*	Mangan and mangan compounds (calculating as MnO_2)	MnO_2	0.0003
74*	Metaldehyl		
75	Nitrobenzene and its compounds	$\text{C}_6\text{H}_5\text{NO}_2$	0.005
76	Nitrochlorinebenzene	$\text{Cl C}_6\text{H}_4 < \text{NO}_2$	0.001
77	Nicotin		0.0005
78	Metal nitrit	NO_2	
79	Ozon	O_3	0.0001
80*	Oxide carbon	CO	0.030
81*	Oxide etylen		0.001
82*	Oxide zinc	ZnO	0.005
83*	Oxide nito, calculating as N_2O_5	$\text{N}_2\text{O}, \text{NO}, \text{NO}_2, \text{N}_2\text{O}_3, \text{N}_2\text{O}_5$	0.005
84*	Oxide niken	NiO	0.005
85	Oxide iron including fluo and mangan compound		0.004
86	Photpho white (sesquisulfur phesphore)	P_4	0.0003
87	Photphotrichlorinerua compound		0.00005
88	Photphua hydrogen	PH_3	0.0003
89	Photphua metal		0.15-0.30g
90*	Photphorit (ore of under 10 per cent free SiO_2)		0.0005
91	Photgen	COCl_2	0.0005
92*	Phenol	$\text{C}_6\text{H}_5\text{OH}$	0.005
93	Photphat dietyl	$\text{C}_{10}\text{H}_{14}\text{NO}_5\text{PS}$	0.00005
94	Paranitropheny		5mg/kg
95	(Pration, thiophot)		(insecticide)
96	Sunfur lead	PbS	0.0005
97	Sunfua carbon	SC_2	0.010
98	Sunfua hydrogen	H_2S	0.010
99*	Tetrachlorinerua carbon	CCl_4	0.050
100	Tetrachlorineheptan		0.001
101	Tetra etyl lead	$\text{Pb}(\text{C}_2\text{H}_5)_4$	0.000005

No.	Name of chemicals	Formula	Concentration
102	Tetra nitrometan	$\text{CH}_3(\text{NO}_2)_4$	0.00003
103	Metal mercury and mercury inorganic compound, excluding HgC12 (sublime)	Hg	0.00001
104	Mercury (II)		
105	Chlorinerua (sublime)	HgCl_2	0.0001
106	Trinitro chlorinebenzene		0.001
107	Trichlorineetylen		0.001
108	Trichlorineetylen	$\text{C}_2\text{H}_3\text{Cl}_3$	0.050
109	Trinitrobenzene and its compounds	$\text{C}_6\text{H}_3(\text{NO}_2)_3$	0.001
110	Toluen dihydrogenxyanat		0.0005
111	Nitro Toluen	$\text{CH}_3\text{-C}_6\text{H}_4\text{-NO}_2$	0.003
112	Tetraetyl	$\text{C}_{10}\text{H}_{20}\text{N}_2\text{S}_4$	