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Additional Questions and Replies

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II. ECONOMIC POLICIES

- Monetary and Fiscal Policy
- Investment Regime

Question 1

We thank the Vietnamese Delegation for its reply to Question No. 9 in WT/ACC/VNM/41 which induces two remarks: we request Viet Nam to make this new decree available to the Membership and to update the draft Working Party report in a detailed and appropriate manner.

Answer:

The draft Decree guiding the implementation of the Commercial Law regarding enterprises with foreign-owned capital specializing in purchase and sale of goods and activities directly related to purchase and sale of goods in Viet Nam has been submitted to the Government for consideration. The Decree will be made available and its contents used to update the Working Party Report once approved by the Government.

Question 2

Investment Regime: This section needs to be substantially revised to reflect the changes brought about by the enactment of the Investment, Enterprise, and Commercial Laws as well as the implementing regulations that are being drafted.

Answer:

Viet Nam has updated the section on Investment Regime to reflect the recent legislative changes.

Question 3

New licensing system: Can Viet Nam confirm that for investments under 300 billion dong and as long as they are not acting in conditional or prohibited sectors, enterprises will not have to reapply for an investment licence or business registration when modifying their business activities?

Answer:

Any changes to the investment/business activities indicated in the Investment Certificate and/or Business Registration Certificate have to be re-registered. The purpose of this requirement is to ensure the legal basis and legitimate rights and benefits of investors during operation in Viet Nam.

Question 4

What kind of administrative measures does Viet Nam envisage to minimize the administrative burden, which now occurs for investments above 15 billion dong because they have to get both an investment licenses as well as register the business? Will there be a harmonisation of the two application processes?

Answer:

There is no burden in the investment/business registration procedures applicable to foreign investors. Under the Law on Investment and the Law on Enterprise, these two procedures have been harmonized (i.e. an Investment Certificate is also considered and serves as a Business Registration Certificate).

Question 5

Conditional investments ask for both investment evaluation as well as business registration. The explanatory note by Viet Nam on the three laws (investment, enterprises and commercial) explains that where legislation requires conditions, the enterprises are only permitted to do business when they satisfy conditions as stipulated. Then it is said that business conditions are set in the forms of Certificate of Business Registration, Certificate of Business Conditions, Certificate of Profession, etc. Are these Certificates additional to the investment evaluation and the business registration and if yes is there a separate application process?

Answer:

The Certificate of Business Registration serves as the legal basis for the establishment of an enterprise. In case of doing business in any of the conditional business sectors, an enterprise has to apply for the appropriate licenses/certificates. The application for such licences/certificates will be subject to a separate application process.

Question 6

Paragraph 32 onwards (WT/ACC/SPEC/VNM/5/Rev.2), General comment: this section needs to be redrafted completely to reflect the contents of the new legislation – it now explains the system based on the old legislation, which is confusing.

Answer:

Viet Nam has updated this section to reflect the new legislative developments of the Investment Law.

Question 7

Paragraph 35 (WT/ACC/SPEC/VNM/5/Rev.2), Question 17 of WT/ACC/VNM/41: We note Viet Nam's statement that it is currently revising its business licensing system. We thank Viet Nam for the illustrative list of conditional business sectors provided in Table 2 (seven sectors only), and we would urge Viet Nam to complete this exercise as soon as possible in order to have an exclusive list comprising 1) the conditional business sectors, 2) the conditions for licences in these sectors and 3) the authorities responsible for granting the licence. We would also urge Viet Nam to introduce a one-stop-shop for investment matters.

We stress the importance of this exercise, and would be happy if Viet Nam could indicate a timing for the completion of this task.

Answer:

Viet Nam is reviewing its business licensing system and the conditions for licenses, in particular to fully comply with the transparency obligation under GATS. Information on conditional business sectors, the applicable conditions and the responsible authorities have been frequently updated and made public in several websites of government and non-governmental agencies (see the answer to Question 13 of WT/ACC/VNM/41).

In practice, the one-stop-shop for investment matters has been set up in Ministries and local authorities.

Question 8

Paragraph 39 (WT/ACC/SPEC/VNM/5/Rev.2) and Question 9 of WT/ACC/VNM/41, Commercial law, Questions 18 and 19: We note that Implementing Regulations for the Investment Law are under preparation. These will indicate the percentages of shares that foreign enterprises are allowed to purchase in Vietnamese enterprises and the list of conditional investment licences and their conditions.

- **Could Viet Nam indicate when they could submit the draft Regulations to the Working Party?**
- **Could Viet Nam submit the latest version of the draft Implementing Decree to the 2005 Commercial law to the Working Party?**

Answer:

Draft Decrees guiding the implementation of the Investment Law will be made available to the Working Party at soon as the drafting is completed.

As for the decrees guiding the implementation of the Commercial Law of 2005, the situation is as follows:

- (a) The Government has so far promulgated the following decrees:
 - Decree No. 12/2006/ND-CP dated 23 January 2006 guiding the implementation of the Commercial Law on international trade activities and other importation, exportation, processing and transit of goods with foreign countries;
 - Decree No. 19/2006/ND-CP dated 20 February 2006 guiding the implementation of the Commercial Law on rules of origin;
 - Decree No. 20/2006/ND-CP dated 20 February 2006 guiding the implementation of the Commercial Law on goods inspection services;
 - Decree No. 35/2006/ND-CP dated 31 March 2006 guiding the implementation of the Commercial Law on franchising; and
 - Decree No. 37/2006/ND-CP dated 4 April 2006 guiding the implementation of the Commercial Law on trade promotion activities.
- (b) The final drafts of the following Decrees have been submitted to the Government (approval is expected soon):
 - Draft Decree guiding the implementation of the Commercial Law on the goods and services that are prohibited, restricted or conditional when conducting business;
 - Draft Decree guiding the implementation of the Commercial Law on representative offices, branches of foreign firms in Viet Nam;
 - Draft Decree guiding the implementation of the Commercial Law on foreign invested enterprises specializing in trade in goods and other activities directly related to trade in goods in Viet Nam; and
 - Draft Decree guiding the implementation of the Commercial Law on e-commerce.

Viet Nam has provided some drafts to the Working Party. Once promulgated, Viet Nam will immediately provide the Working Party with the English translation of these Decrees.

Question 9

Paragraph 42 (WT/ACC/SPEC/VNM/5/Rev.2), Question 39 of WT/ACC/VNM/41: We would reiterate our concern as regards the possibility given in the Investment Law to grant ad hoc incentives to an important industry or a region. However, we thank Viet Nam for the improvement of Article 39, which stated that any such proposal should be given to the National Assembly for consideration. Could Viet Nam explain what will be the legal form of such resolution of the National Assembly and whether it will be published? Could Viet Nam also commit itself to notify all such decisions to grant ad hoc incentives to the WTO?

Answer:

The decision of the National Assembly on this matter will be in the form of a Resolution - one of the forms of legal normative documents issued by the National Assembly. Viet Nam will notify the WTO of its subsidy programs in accordance with the WTO's Agreement on Subsidies and Countervailing Measures.

Question 10

Paragraph 48, (WT/ACC/SPEC/VNM/5/Rev.2): The relevant Articles in the Investment Law are 45 to 49.

Answer:

Yes.

Question 11

Paragraph 49, (WT/ACC/SPEC/VNM/5/Rev.2): This paragraph should be updated to describe the procedures set out in Articles 45 to 49 of the 2005 Investment Law.

Answer:

Viet Nam has updated this paragraph.

Question 12

Questions 21 and 36 (WT/ACC/VNM/41): We thank Viet Nam for the subsidy notification for the period of 2003-2004. We will comment on it in more detail when we discuss the relevant section of the Working Party Report.

As regards the 2005 Investment Law, we note that it stipulates in Article 32 that investments in export processing zones shall be entitled to the incentives under the law. Because of this classification, all incentives listed under Section 2 "Investment Incentives" 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 43 concerning investment to infrastructure of industrial zones, export processing zones, high tech zones etc.

We would like to repeat our previous position on this matter and urge Viet Nam to eliminate all prohibited subsidies upon accession. We do not consider the seven years' transition period to abolish export subsidies in the form of investment incentives appropriate, since the exemptions in the Agreement on Subsidies and Countervailing measures concerning prohibited subsidies do not apply to Viet Nam. We therefore urge Viet Nam to eliminate all prohibited subsidies contingent on export performance upon accession.

Answer:

Viet Nam commits not to introduce new subsidies that are prohibited under the SCM from the date of accession to the WTO. With the exception of certain prohibited export subsidies in the form of investment incentives granted to licensed projects of export production prior to the WTO accession for which Viet Nam is only seeking a very short transitional period of five years in order to honour its commitments with the existing investors and stabilize the business environment, Viet Nam commits to eliminate all remaining prohibited subsidies upon accession to the WTO.

Article 32 and Article 37 of the Investment Law stipulate investment incentives for projects investing in export processing zones. In the Implementing Decree of the Law, these investment incentives will be stipulated consistent with Viet Nam's commitments on subsidies (i.e. incentives will not be contingent upon export performance or local contents). Specifically, enterprises in export processing zones shall not be required to export their products and shall only be entitled to incentives in the forms of, *inter alia*, facilitation of procedures with respect to investment and rental of land and premises; facilitation in the supply and training of labour, supply of water, power and other utilities.

Question 13

As regards prohibited subsidies in general, we note that the 2005 Investment Law, Article 32, stipulates that investments in export processing zones shall be entitled to the incentives under the law. Because of this classification, all incentives listed under Section 2 "Investment Incentives" are also granted for export activities, and considered as prohibited export subsidies under Article 3 of the WTO Agreement of Subsidies and Countervailing Measures (subsidies contingent on export performance).

We welcome the commitment of Viet Nam to stop granting any new export subsidies upon accession, and would be happy if Viet Nam could explain its view on how Article 32 of the Investment Law can be considered compatible with this commitment to stop granting export subsidies?

Answer:

Article 32 and 37 of the Law on Investment stipulate investment incentives for investments in export processing zones. However, in the implementing decrees of the law, these incentives shall conform to Viet Nam's commitments on subsidies (i.e. incentives will not be contingent upon export performance or local contents). Specifically, enterprises in export processing zones are not required to export their products and are entitled to incentives in the forms, among others, of: facilitation of investment procedures, and rental of land and premises; support in the supply and training of labour, supply of water, power and other public utilities.

Question 14

Investment Law: We thank Viet Nam for its replies to our questions and the clarifications provided. We would however still have the following question:

Article 5.2 of Investment Law stipulates that in case of special investment activities which are regulated by other laws, the provisions of such other laws apply.

Could Viet Nam indicate what are these special investment activities subject to other laws, and what are the laws that apply to these sectors?

Answer:

The provisions under Article 5.2 shall be interpreted as such: in case investment activities (for example in banking, insurance etc.) are regulated by other laws, those investment activities are subject to such other laws (for example, the Law on Credit Institutions, the Law on Insurance etc.). Please also refer to explanation of Article 29 below.

Question 15

Investment Law, Article 29 – Conditional investment sectors: The Article lists some conditional sectors and indicates additional sectors "a number of other sectors in accordance with law". Could Viet Nam confirm that this "law " will be the Implementing regulations to the Investment Law that should set out the conditional sectors and conditions for their licences? We stress that the list of conditional sectors included in the implementing regulations should be exhaustive. Can Viet Nam confirm that the list of the implementing Regulations will indeed be exhaustive and list all conditional sectors and their conditions?

Answer:

The Law on Investment and its Implementing Decrees cannot provide for an exhaustive list of conditional investment sectors. Investment activities in certain sectors are subject to other laws, which are of higher legal validity than Government's decrees and are subject to changes independently from the Law on Investment. As a result, Article 5.2 makes reference to the application of other laws to certain investment activities such as banking, insurance etc.

Question 16

Article 31 of Investment Law gives the Government powers to amend and add to the lists of both prohibited and conditional investment sectors. We are concerned about these types of provisions as they make the system very volatile and are not providing legal certainty to operators. We consider that it should be possible to decide on prohibited and conditional sectors in an exclusive way, and that the lists should only be reduced, but not increased by adding further prohibited or conditional sectors. We would be happy if Viet Nam would explain the exact procedures that are to be followed when the lists are changed, and how the transparency of such changes is ensured?

Answer:

Viet Nam confirms that the amendment of or addition to the above lists (if any) will be consistent with Viet Nam's WTO obligations. Concerning the procedure, the Ministry of Planning and Investment in coordination with the relevant agencies would, in case necessary, submit to the Government the proposed changes to the implementing Decree on this matter. As for investment conditions provided for in other laws or decrees, relevant agencies will, in cooperation with Ministry of Planning and Investment, submit proposed changes (if any) to the competent authority for consideration. Changes on this matter will be made public, even for comments at drafting stages, in accordance with the Law on the Promulgation of Legal Normative Documents.

Question 17

Investment Law, Article 37: Could Viet Nam explain the purpose of this Article? Does this Article indicate that the Government can decide to grant other incentives than those listed in previous Articles 32 to 36 to these special zones, including export processing zones?

We have expressed our concerns about a possibility to grant ad hoc incentives that are not clearly provided by the law (lack of transparency) and would like to repeat these concerns in this context.

Answer:

Article 32 and 37 of the Law on Investment stipulate investment incentives for investments in export processing zones. However, in Implementing Decrees of the law, these incentives shall conform to Viet Nam's commitments on subsidies (i.e. incentives will not be contingent on export performance or local contents). Specifically, enterprises in export processing zones shall not be required to export their products and shall only be entitled to incentives in the forms of, *inter alia*, facilitation of procedures with respect to investment and rental of land and premises; facilitation in the supply and training of labour, supply of water, power and other utilities.

The provision of ad hoc investment incentives will be provided for in the form of Resolution by the National Assembly in a transparent manner.

Question 18

Investment Law: Article 39: We would reiterate our concern as regards the possibility given in the Investment Law to grant ad hoc incentives to an important industry or a region. However, we thank Viet Nam for the improvement of Article 39, which stated that any such proposal should be given to the National Assembly for consideration. Could Viet Nam explain what will be the legal form of such resolution of the National Assembly and whether it will be published? Could Viet Nam also commit itself to notify all such decisions to grant ad hoc incentives to the WTO?

Answer:

The decision of the National Assembly on this matter will be in the form of a Resolution - one of the forms of legal normative documents issued by the National Assembly. Viet Nam will notify the WTO of its subsidy programs in accordance with the WTO's Agreement on Subsidies and Countervailing Measures.

Question 19

Investment Law, Article 45 to 49 – Investment procedures. We have the following comments to make on this section:

Investment Law, Article 47: As regards Article 47, we note that criteria as regards important national projects are still to be decided by the National Assembly and the procedures, and the responsible State body by the Government. Could Viet Nam indicate when these regulations will be available and what is the definition of an "important national project".

Article 47 provides that only projects with invested capital of 300 billion dong or more, or which are in a conditional sector, are subject to evaluation procedure. However, Article 48 lays down the evaluation procedure for projects with invested capital of less than 300 billion dong. Could Viet Nam clarify the contradiction between Articles 47 and 48?

Answer:

Criteria for an "important national project" shall be decided by the National Assembly on case-by-case basis. Under Resolution No. 05/1997/QH10 dated 29 November 1997, a project shall be considered as an "important national project" when meeting one of the following criteria:

- (a) Projects having an invested capital of 10,000 billion VND or more (at 1997 price);
- (b) Projects having major impacts or potentially having major impacts on the environment;
- (c) Projects leading to movement and resettlement of 50,000 people or more in populous areas, or 20,000 people or more in mountainous areas and areas of ethnic minorities;
- (d) Projects located in areas having special importance to national defence and security, having important historical and cultural relics, or having special natural resources; and
- (e) Projects requiring special mechanisms or policies that need to be considered and decided by the National Assembly.

Under Article 47.1, the evaluation procedures shall be applicable to either two types of projects: (i) projects having invested capital of VND 300 billion or more; and (ii) projects in conditional investment sectors. However, in reality, there are projects that have invested capital of VND 300 billion or more, and fall into conditional investment sectors at the same time. Article 48 stipulates the evaluation procedure for these projects. Therefore, there is no contradiction between Article 47 and Article 48.

Question 20

Investment Law, Article 50: Can Viet Nam confirm that the investment certificate is a sufficient registration document for a foreign company having an investment project, and that it does not need to make a separate business registration in accordance with the Enterprise Law?

Answer:

Viet Nam confirms this understanding.

Question 21

Enterprise Law, Article 3.2: Article 3.2 stipulates that where there are other laws providing regulations on establishment because of their distinctive nature, those laws shall prevail.

Could Viet Nam indicate what are these other laws that are relevant for establishment of enterprises?

Answer:

This provision should be interpreted as such: in case other laws (for example, the Law on Credit Institutions, the Law on Insurance Business etc.) provide for specific regulations on the establishment of an enterprise in these sectors, such other laws shall prevail.

Question 22

Enterprise Law, Article 7: Could Viet Nam confirm that the legal instrument referred to in this Article will be the implementing Regulations to the Investment Law that will list the conditional and prohibited business sectors, and that no other legal instrument is foreseen for this purpose?

Answer:

No. The documents mentioned in this Article include the implementing decrees of the Law on Enterprise and/or the Law on Investment. These decrees only stipulate the prohibited investment/business sectors and the conditional investment/business sectors as governed by the two laws. In addition, other existing laws, ordinances and other legal documents may also regulate this matter (for example, the Law on Credit Institutions, the Law on Insurance Business etc.).

Question 23

Enterprise Law, Article 20: It is noted that the investment certificate is a sufficient registration document for a foreign company having an investment project, and that there is no need to make a separate business registration in accordance with the Enterprise Law.

Answer:

We take note of the comment.

Question 24

Enterprise Law, Article 37 – Representative offices and branches: What is the foreseen time table for the Government to issue regulations on procedures and formalities for opening branches and representative offices in Viet Nam ?

Answer:

The procedures and formalities for opening branches and representative offices are provided for in the Decree on Business Registration which takes effect on 1 July 2006.

Question 25

Commercial Law, Articles 25 and 76 - goods and services that are banned, restricted or subject to conditional business.

- **Can Viet Nam indicate the lists of banned and restricted goods and services referred to in these Articles?**
- **Can Viet Nam confirm that the list of goods and services subject to conditional business is the same or identical to the implementing regulations of the Investment Law which will define the conditional business sectors, or whether additional legal provisions are foreseen in this area?**

Answer:

- The list will be promulgated in the Decree guiding the implementation of Commercial Law on goods and services that are banned, restricted and subject to conditional business.
- Concerning the approach in drafting the list of goods and services subject to conditional business, it is somewhat identical to the list of conditional investment sectors stipulated in Viet Nam's Investment law. Both are related to some areas that are sensible or easily detrimental to Viet Nam's socio-economic life such as those affecting national defence, security, culture, education and training, etc. However, the differences between the two are as follows:

	The list of goods and services subject to conditional business stipulated by the 2005 Commercial Law	The list of conditional investment sectors stipulated by the 2005 Investment Law
1. Basic background	This Law regulates commercial activities in Viet Nam.	This Law regulates investment activities in Viet Nam.
2. Name	The list of goods and services subject to conditional business	The list of conditional investment sectors
3. Implication	Applied to commercial activities (i.e. for profit making purposes) comprising purchase and sale of goods, provision of services etc. (Article 3.1 of the Commercial law).	Applied to investors who uses capital in the form of tangible or intangible assets for the purposes of forming assets with which to carry out investment activities in accordance with the provisions of this Law and other relevant laws (Article 3.1 of the Investment law)

- The Commercial Law of 2005 does not regulate "conditional business sectors". It only regulates "goods and services subject to conditional business". Goods and services subject to conditional business shall only be permitted to be purchased or provided after a number of pre-specified conditions stipulated by the legal documents guiding the Commercial Law and other legal documents are fully satisfied.

Question 26

We note the entire section needs updating to reflect new Laws on Enterprises and Investment. We suggest Viet Nam remove old/redundant material that may conflict with provisions of most recent laws. We also request copies of all relevant implementing regulations (whether in draft or promulgated form) be circulated to WTO Members, and also their provisions incorporated, where relevant, into this section and other sections of the report as appropriate.

Answer:

Viet Nam has updated the section to reflect the new Law on Investment and Law on Enterprise. Draft implementing decrees will be circulated to the Working Party as soon as they are completed.

Question 27

We note Table 1 ("Prohibited Business Sectors") has been updated and now states a range of sectors where "Conducting Business" is prohibited. We would ask that Viet Nam confirm in this section of the report if a "prohibited business sector" implies a prohibition on domestic business activities, as well as the import and export of such items. If this is the case, we suggest that Viet Nam ensure consistency between this section and the section of the report that covers import prohibitions (e.g. Tables 11 and 12). Viet Nam should outline very clearly what HS tariff codes (i.e. which chemical products) are subject to such prohibitions and which are not.

Answer:

Yes, a "prohibited business sector" implies a prohibition on domestic business activities, as well as the import of such items.

There is a translation error here. "Toxic chemicals" in Item 2 of the Table 1 are actually "toxic materials" that are in the same grouping with explosives and radioactive substances, those that have fatal effect. Those prohibited products mentioned in Table 11 and 12 correspond to Item 6 of Table 1 which refers to "chemical substances of *high* toxicity".

The administration of toxic chemicals in Viet Nam, both in domestic circulation and importation, is fully in accordance with international conventions (i.e. the Stockholm Convention on Persistent Organic Pollutants and the Convention on the Prohibition of the Development, Production, Stockpiling and Use of Chemical Weapons and on their Destruction).

Question 28

We note the reference to "conditional business sectors" and Viet Nam's statement that it would develop a detailed list of "conditional sectors and specific conditions for each sector" to guide implementation of the new Investment Law.

We suggest Viet Nam summarise the relevant provisions of its new Investment Law in this section which relate to conditional sectors.

We request that Viet Nam provide the relevant implementing regulations relating to conditional licences to the Working Party for examination, and reflect key provisions in this section.

We request that Viet Nam provide a full and final (as opposed to "illustrative") list of all conditional sectors subject to licensing, the exact nature of these conditions, as well as specify the Government agencies from which various "conditions" or "approvals" need to be met?

Answer:

The Law on Investment provides for the following conditional investment sectors: (i) sectors having impacts on national defence, national security and social order; (ii) banking and finance; (iii) sectors having an impact on public health; (iv) culture, information, press and publication; (iv) recreational services; (v) real estate; (vi) survey, prospecting, exploration and mining of natural resources; (vi) education and training. Besides, foreign investors are also subject to other investment conditions in line with Viet Nam's commitments in international treaties to which Viet Nam is a member.

Viet Nam is reviewing its business licensing system and the conditions for licenses to fully comply with the transparency obligation under GATS. Information on this matter will be made available as soon as it is completed.

Question 29

We refer to Articles 52.2 (a) and 104.3 of the new Enterprise Law, which suggest that a minimum of 65 per cent of voting capital will be required to make all decisions of the highest decision making body of a limited liability or shareholding company and investors cannot choose a lower threshold.

We request that Viet Nam confirm if this is correct, and if so, reflect this provision in the section of the report relating to the Enterprise Law (2005).

We ask if Viet Nam will consider grandfathering provisions to protect the position of current joint ventures which have a 51 per cent/49 per cent structure – and which made such investments on the understanding that this constituted a sufficient majority for most decision-making purposes.

Answer:

Unless otherwise provided in the charter of the enterprise, decisions of the members' Council in limited liability companies on matters stipulated in Article 52.1 or of the Board of Management in shareholding companies on matters stipulated in Article 104.2 of the Law on Enterprise (2005) shall

be adopted by voting during meetings of the members' Council or of the Board of Management. The minimum percentage of votes required to adopt such decisions is provided for in Article 52.2 and Article 104.3 of the Law on Enterprise (2005), and in a few cases more than simple majority is required for the vote to be passed.

The issue of grandfathering has not been addressed in the Law on Investment and could only be considered, if possible, in the implementing Decree of the Law on Investment.

Question 30

With references to paragraph 39 (WT/ACC/SPEC/VNM/5/Rev.2) and Viet Nam's new Investment Law, it appears there remain differences in treatment of foreign and domestic investors for registration purposes.

In relation to paragraph 39, we ask that Viet Nam provide an explanation in this section as to how its commitment to eliminate discriminatory provisions is consistent with the requirement that foreign investors undertake investment registration for any project, regardless of size, whereas local investors are only required to register projects if they exceed approximately US\$ 1 million in size.

Answer:

It is not relevant to compare the Investment Registrations of Vietnamese investors who have already possessed a Business Registration Certificate with those of foreign investors who have not yet a presence in Viet Nam. Under the Law on Investment, foreign investors have to apply for an Investment Registration, and such a registration is concurrently considered as a Business Registration Certificate. Thus, even though there is a difference in the investment registration procedures, the Law on Investment does not lead to a substantive difference between domestic and foreign investors. Moreover, the evaluation procedures for the issuance of Investment Registration Certificates are uniformly applicable to both domestic and foreign investors with investments in conditional investment sectors and having invested capital of VND 300 billion or more.

Question 31

With reference to paragraph 44 of WT/ACC/SPEC/VNM/5/Rev.2, we request Viet Nam clarify and list in the report, where unanimity is still required for decisions concerning joint-venture enterprises' operations, under the new Enterprise Law and other applicable Laws.

Could Viet Nam confirm in the report that there no longer exist any requirements for existing/future joint-venture partners or wholly foreign-owned enterprises to sell compulsorily or otherwise transfer part or their entire share of a venture to a domestic or third party.

Answer:

Viet Nam confirms as follows:

- Under the Law on Investment and the Law on Enterprise, unanimity is not required for decisions of joint-venture enterprises; and
- There no longer exists any requirements in the above-mentioned laws for existing/future joint-venture partners or wholly foreign-owned enterprises to sell compulsorily or otherwise transfer part or their entire share of a venture to a domestic or third party.

Question 32

On mining investment and with reference to paragraph 50 of WT/ACC/SPEC/VNM/5/Rev.2 of 21 February 2006 and the recently amended Mining Law, we request that Viet Nam indicate in the report an explanation of the following issues:

- **What grounds exist for refusal of an investment licence if they are considered on a "case by case basis"?**
- **What authority oversees investment projects in mining on such a basis?**
- **What are the criteria for a decision?**
- **What avenues for appeal exist if a licence is refused?**
- **Are domestic firms also subject to case-by-case consideration?**

Answer:

The approval or refusal of an investment licence in such case will be based on, among others, criteria as follows: (i) compliance with master planning/zoning for technical infrastructure, master planning/zoning for land use, master planning for construction, master planning for utilization of minerals and other natural resources; (ii) land use requirements; (iii) project implementation schedule; (iv) environmental solutions. These regulations are uniformly applicable to both domestic and foreign investors. The appeal process is in accordance with Viet Nam's applicable laws (see the section on "Framework for making and enforcing policies").

Question 33

We note that Article 40 of Decree No. 160/2005/ND-CP states that the "evaluation of investment projects for mining minerals in the case of FDI projects shall be implemented in accordance with the Law on Foreign Investment in Viet Nam".

We request Viet Nam explain in the report how this evaluation will take place once the new Investment Law takes effect (and replaces the Law on Foreign Investment), and how this new Law will interact with the Mining Law 2005?

Answer:

The Law on Investment provides for the conditions and procedures for the issuance of Investment Registration, including investments in mining, while the Mineral Law stipulates the mining activities of minerals and State management on this matter. Under the Law on Investment, the mining of minerals is a conditional investment sector. The same procedures for evaluation and issuance of Investment Certificates apply to investments in this sector and investments in other conditional investment sectors.

Question 34

We note that Article 46 of Decree No. 160/2005/ND-CP states that "prior to issuing an investment licence for mineral activities, the competent investment licence issuing body must obtain the written opinion of the competent mineral licence-issuing body".

Can Viet Nam clarify in the report what issues such an opinion will cover?

Answer:

The above mentioned regulation aims to ensure the close coordination between investment licensing agency and the mining licensing agency and the mining licensing agency in appraising applications

for foreign investment licenses in the field of mineral activities in Viet Nam, and to accelerate the process of issuing investment licenses and mineral licenses.

The opinions in writing of the competent authority in charge of issuing mineral licenses will have the aim to clarify whether the application for investment licence meet the requirements for issuing the mineral licence according to the legislation on minerals.

In particular, the competent investment licence issuing body gives opinion on, among other things, major issues as follows: (i) compliance with master planning/zoning for technical infrastructure, master planning/zoning for land use, master planning for construction, master planning for utilization of minerals and other natural resources; (ii) land use requirements; (iii) project implementation schedule; (iv) environmental solutions. These regulations are uniformly applicable to both domestic and foreign investors.

- **State-Owned, State trading enterprises / Privatization**

Question 35

This is another section that will need broad revision to reflect the changes that have been made by the same laws and implementing regulations mentioned above. In addition, we request that the title of this section be revised to clarify the section's coverage. In light of the extensive amount of State ownership that will remain in Viet Nam's economy, we believe we will need strong commitment language addressing how State-owned and state-controlled firms will operate.

Answer:

Viet Nam has updated the relevant section in the Draft Working Party Report, including the number of SOEs equitized in different time periods (Table 6).

The title of this section has already been revised in accordance with the comments from some Members of the Working Party.

Question 36

We propose the following commitment paragraph to replace paragraphs 69 through 71 of the current draft:

- 70. The representative of Viet Nam confirmed that Viet Nam would ensure that all enterprises that were State-owned or state-controlled, including equitized enterprises in which the State had control, and enterprises with special or exclusive privileges would make purchases, not for governmental use, and sales in international trade, based solely on commercial considerations, e.g., price, quality, marketability, and availability, and that the enterprises of other WTO Members would have an adequate opportunity in accordance with customary business practice to compete for participation in sales to and purchases from these enterprises on non-discriminatory terms and conditions. In addition, the Government of Viet Nam would not influence, directly or indirectly, commercial decisions on the part of enterprises that are state-owned, state-controlled, or that have special and exclusive privileges, including decisions on the quantity, value or country of origin of any goods purchased or sold, except in a manner consistent with the WTO Agreement and the rights accorded to non-governmental enterprise owners or shareholders. The Working Party took note of these commitments.**

71. **The representative of Viet Nam confirmed that, without prejudice to Viet Nam's rights with respect to government procurement, all laws, regulations and other measures relating to the purchase or sale of goods and services, by enterprises that are state-owned, state-controlled, or that have special or exclusive privileges, that are for commercial sale, production of goods or supply of services for commercial sale, or for non-governmental purposes would not be considered to be laws, regulations and measures relating to government procurement. Thus, such purchases and sales would be subject to the provisions of Articles II, XVI, XVII of the GATS and Article III of the GATT 1994. The Working Party took note of these commitments.**

We will also need to review the factual portion of the text to ensure its coherence, in particular with the section on privatization.

Answer:

We can agree with the following text:

70. The representative of Viet Nam confirmed that Viet Nam would ensure that all enterprises that were State-owned or state-controlled, including equitized enterprises in which the State had control, and enterprises with special or exclusive privileges would make purchases, not for governmental use, and sales in international trade, based solely on commercial considerations, e.g., price, quality, marketability, and availability, and that the enterprises of other WTO Members would have an adequate opportunity in accordance with customary business practice to compete for participation in sales to and purchases from these enterprises on non-discriminatory terms and conditions. In addition, the Government of Viet Nam would not influence, directly or indirectly, commercial decisions on the part of enterprises that are state-owned, state-controlled, or that have special and exclusive privileges, including decisions on the quantity, value or country of origin of any goods purchased or sold, except in a manner consistent with the WTO Agreement and the rights accorded to non-governmental enterprise owners or shareholders. The Working Party took note of these commitments.
71. The representative of Viet Nam confirmed that, without prejudice to Viet Nam's rights with respect to government procurement, all laws, regulations and other measures relating to the purchase or sale of goods and services, by enterprises that are state-owned, state-controlled, or that have special or exclusive privileges, that are for commercial sale, production of goods or supply of services for commercial sale, or for non-governmental purposes would not be considered to be laws, regulations and measures relating to government procurement. Thus, such purchases and sales would be subject to the provisions of Articles II, XVI, XVII of the GATS and Article III of GATT 1994. The Working Party took note of these commitments.

Question 37

Privatization: This section needs to be revised to reflect changes in the same laws mentioned above and other relevant factors. We have the following questions.

- **Of the three classifications of State-owned enterprises, what is the percentage of the total represented by each group, i.e., what percentage of enterprises will remain 100 per cent State-owned and will not be equitized? (Prime Minister's Directive No. 20/1998/CT-TTg of 21 April 1998 and paragraph 75, WT/ACC/SPEC/VNM/5/Rev.2)**

- **What is the process or procedure the Prime Minister or Chairmen of the People's committees must undertake to decide whether to equitize State-owned enterprises listed in Group 1? (Enterprise Law and paragraph 75, WT/ACC/SPEC/VNM/5/Rev.2)**
- **Who determines, and how is it decided, that an enterprise should be in Group 2 (enterprises in which the State would retain controlling shares) because it is "vital to the economy?" What is the definition for an enterprise that is "vital to the economy?" (Directive No. 20/1998/CT-TTg of 21 April 1998 and Paragraph 75, WT/ACC/SPEC/VNM/5/Rev.2)**
- **Of the 2,242 equitized firms, what proportion have experienced changes in their boards of management since equitization? (paragraph 77, WT/ACC/SPEC/VNM/5/Rev.2).**

Answer:

Viet Nam has updated this section in the Working Party Report.

- Directive No. 20/1998/CT-TTg was replaced with Decision No.155/2004/QD-TTg dated 24 August 2004 of the Prime Minister. Therefore, all the provisions of Directive No. 20/1998/CT-TTg had been repealed. As for the number of enterprises which the State holds 100 per cent capital:
 - As of the end of 2006, the number will be around 1,800 enterprises;
 - In accordance with the provisions of Decision No.155/2004/QD-TTg and the plans on restructuring SOEs of ministries, localities and corporations up to the year of 2007, the number of enterprises which the State holds 100 per cent capital will be around 1,500. It will be further reduced in the following years and will be restricted only to the areas of national security and some large corporations.
- Based on the provisions as set out in Decision No. 155/2004/QD-TTg, Ministries and provincial-level people's committees will work out the plan to restructure enterprises under their authority in which they will make the decision concerning whether the enterprise fall under Group 1 or 2. After completion, they would submit their plans to the Prime Minister for approval. As for SOEs which establishment decisions were made by the Prime Minister, its equitization will be decided by the Prime Minister based on the proposals by their Boards of Directors.
- "Enterprises that are vital to the economy" are (1) those which have large scale, make large contribution to the State budget, leading in application of high technology and play the important role in stabilizing the economy; and (2) enterprises which ensure essential demand for development of production and improvement of lives of rural, mountainous and ethnic minority areas.
- Currently, there is no data on the changes in the boards of management of equitized companies since equitization. However, most equitized firms have experienced changes in their boards.

Question 38

Who are the members of the steering committee for equitization? (Paragraph 79 WT/ACC/SPEC/VNM/5/Rev.2, Circular No. 126/2004/TT-BTC of the Ministry of Finance of 24 December 2004 on the implementation of Decree No. 187/2004/ND-CP).

Answer:

A steering committee for equitization has up to 5 members, including:

- The leader of the agency which issued the decision on equitization or an authorized person (i.e. the leaders of ministries, people's committees of provinces and cities); and
- Representatives of leaders of relevant units of the agency deciding the equitization;
- Directors of the equitized company.

In case of equitization of a general corporation, a leader of Ministry of Finance will also be included.

Question 39

The current model allows "strategic domestic investors" and employees to purchase up to 80 per cent of an equitizing firm at a discount price. They are then required to hold these shares for a minimum of three years from the date of the initial auction. In establishing this system, has Viet Nam considered the possibility that expectations could evolve among shareholders? For instance, at year 2.5 there could be a fear that a massive sell-off will occur at the three year mark. Those with the ability to sell would all want to do so, driving the share price towards zero. What are Viet Nam's views on this scenario?

Answer:

The requirement for strategic shareholders and employees to hold shares for a minimum of 3 years is to ensure that such persons perform the obligations of founding shareholders and it is linked with the purchase of shares at a discount price during equitization. At the three year mark, there might be the transfer of shares among shareholders or between shareholders and stock investors. However, there have been no massive sell-off which drives share price towards zero, because after equitized enterprises are expected to perform better after equitisation. Another reason is strategic investors normally have long-term targets and would be engaged with the long-term development of the firm.

Question 40

(Paragraph 80 WT/ACC/SPEC/VNM/5/Rev.2) In the process of identifying domestic agents who are eligible for "strategic domestic investor" are there specific, non-qualitative criteria for determining who is eligible? Is there a limit on the percentage of shares that can be awarded to any single strategic investor?

Answer:

There are general criteria to demonstrate that such investors have long-term interests in the enterprise. For example, they include: manufacturers and frequent suppliers of inputs to the enterprise, those committed to purchase the enterprise's product over a long period; those who had long-term strategic interest in the enterprise's products; and those who had a long-term strategic interest in the enterprise's business operation and possessed financial potential and management expertise. There is no requirement on the minimum percentage of shares held by a strategic domestic investor. Such percentage is to be decided by each enterprise.

Question 41

We take note of the brackets in paragraph 88 of the draft Working Party Report, and renew our request that Viet Nam accept commitment language for this section that will provide transparency on an ongoing basis to its equitization process.

Answer:

Viet Nam accepts the substance of the commitment language as referred to paragraph 88 and would like to propose the language as follows:

"The representative of Viet Nam confirmed that from the date of accession, Viet Nam would provide WTO Members with annual reports on the status of its programme on equitization and reform of equitised enterprises that the State maintains a majority equity as long as the programme would be in existence. The Working Party took note of this commitment."

Question 42

In this regard, we draw attention to the provisions of the Enterprise Law that mandate a four-year window during which most State-owned firms are expected to be equitized and the fact that the State can maintain a majority equity share in an "equitized" firm. Under these circumstances, it is important that Viet Nam report on both equitization and privatization.

Answer:

Viet Nam would report both the equitisation and the reform of equitised enterprises that the State maintains a majority equity.

Question 43

We welcome additional material in paragraph 59 of WT/ACC/SPEC/VNM/5/Rev.2 on public goods and services. We would recommend that the word "services" be added in the sentence that reads "Enterprises supplying public goods and services could import goods and services to produce such public goods and services."

We request that Viet Nam reflect in the report the key principles of detailed procedures being developed in relation to the supply of such public goods and services.

Answer:

Viet Nam is agreeable to the proposal to add the word "services".

Investments in the production and supply of public services are subject to the Law on Investment, thus, the same procedures apply to such investment projects and other investment projects.

Detailed procedures will be provided when they are completed.

Question 44

We request that Viet Nam confirm in this section of the report whether the evaluation process of Vietcombank has been completed as scheduled (31 December 2005), and provide an update on the equitisation process of Vietcombank including intended timing and volume of share sales. We also request the same information in relation to the Mekong Housing Bank process.

Answer:

- Equitization program for State-owned Commercial Banks (SOCBs) in Viet Nam has been initiated since 2004.

- The Bank for Foreign Trade of Viet Nam (Vietcombank) and Mekong Delta Housing Bank so far have completed the preparation works for stock-taking and checking assets, outstanding debts and resolving financial issues before making bank valuation. Vietcombank and Mekong Delta Housing Bank have recruited international consulting agencies to conduct the valuation and provide consultancy on the Initial Public Offers (Intellectual Property O).

Question 45

With reference to paragraphs 80-82, Decision No. 36/2003/QD-TTg permits a foreign investor to purchase up to 30 per cent of the charter capital of a Vietnamese enterprise in permitted sectors of industries and trades. The list of permitted sectors was to be decided jointly between the Prime Minister and the Minister of Planning and Investment and published from time to time. Since the issuance of Decision No. 36 in 2003, we understand no such list of permitted sectors has been published.

We would request Viet Nam indicate in the report the permitted sectors under Decision No. 36 and indicate whether Decision No. 36 will remain valid after 1 July 2006.

We request that Viet Nam indicate in the report if foreign investors will have the right to invest in existing local companies up to 30 per cent (as per Decision No. 36), or whether the regime will be abolished so that entry will be regulated via the licensing system introduced as part of the new Investment Law?

Answer:

The list of sectors in which foreign investors are permitted to purchase shares of Vietnamese enterprises under Decision No. 36 has not been promulgated. Thus, the permitted list mentioned in paragraph 81 of WT/ACC/SPEC/VNM/5/Rev.2 is still in effect.

Decision No. 36 will terminate its effect as from 1 July 2006. The purchase of shares of Vietnamese enterprises by foreign investors will be subject to the Law on Investment and its implementing legal documents.

Question 46

Also with reference to paragraphs 80-82, the Decree No. 187/2004/ND-CP "On Equitization" treats domestic and foreign investors differently. Domestic investors are allowed to be "strategic investors", where foreign investors are not. We would request that this differentiation between domestic and foreign investors with regard to the purchase of strategic ownership stakes be replaced with equal treatment.

Answer:

Viet Nam confirms that any rules on "strategic investors" it may have would be in accordance with Viet Nam's WTO obligations.

Question 47

Article 6 refers to the sectors in which new State companies may be established, including "industries and sectors which have a high competitive advantage, " as defined by the government in its plans for restructuring and developing State companies. Further, Article 87 (2) refers to the Government's role in the formulation of master plans and strategies for the development of State companies. These provisions appear to envision an expansionist role for

SOEs in Viet Nam's economy, beyond that which is needed to develop Viet Nam's capabilities in areas or markets where private enterprises are unwilling to invest.

- **Please reconcile this policy to cultivate and expand the State-owned sector with the general principle that the government intends to allow the market to allocate Viet Nam's scarce resources.**
- **Please elaborate on the policy tools, such as tax or investment incentives that Viet Nam intends to implement to ensure that SOEs are competitive.**

Answer:

- The purpose of Article 6 of the Law on State-owned Enterprises is to restrict the establishment of new SOEs, not to enlarge the SOE sector in Viet Nam. It does not conflict with Article 87.2 of the law. The definition "master plans and strategies for the development of State companies" should be understood to be the restructuring of the SOE sector and alignment of SOEs into sectors provided for in Article 6 of the Law "On State-owned Enterprises". It does not aim to develop or expand the SOE sector. This is also in line with the reform process of enterprises currently undertaken in Viet Nam, which has resulted in a narrower SOE sector, and in the meantime, a larger number of private and foreign invested enterprises.
- That intention is demonstrated by the fact that currently, tax policies, investment incentives and labour, credit, import and export policies are uniformly applicable to both State-owned and private enterprises. From 1 July 2006, State companies must be transformed into limited liability or shareholding companies operating under the Law on Enterprise. After four years, from 1 July 2010, SOEs will no longer be subject to the Law on State-owned Enterprises.

Question 48

Article 12 (3) states that the Government shall provide guidelines on the valuation of land-use rights for use asset valuation for the State companies as a whole.

- **On what basis will the Government measure land-use rights' value?**
- **Will these standards also apply to private enterprises?**

Answer:

The valuation of land-use rights for use in asset valuation of enterprises is subject to the Land Law and the Government's regulations on a price bands that are constructed according to the type of land, the region, the period, and the land-use purpose. Based on such price bands, local authorities will stipulate land prices in detail. This procedure has only been used in the calculation of land rental of enterprises and is uniformly applicable to both State-owned and private enterprises.

Question 49

Article 15 allows State-owned companies to make independent decisions on investment projects as well as prices for sales and purchases. We also note that Article 64 states that the State owner shall "ensure the business autonomy and not directly interfere in the business operations of the company." However, State-owned companies are nevertheless subject to "supervision and inspection" by the State owner, including decisions regarding certain investment projects (Article 65).

- **What specific safeguards are being implemented to ensure that the State does not interfere directly in the business operations of the State company (in ways other than available to a normal shareholder), such that it could influence a State-owned company to make decisions on production or sales on a non-commercial basis?**
- **What happens if the State owner influences the decisions on the company's business operations in a manner not authorized under the law? Will sanctions be applied if a State-appointed board member or members take actions for political or corrupt reasons rather than based on commercial considerations?**

Answer:

The phrase "supervision and inspection" by the State over State-owned companies might have been misinterpreted. The supervision and inspection under Article 65 of the Law on State-owned Enterprise means the supervision of enterprises in the performance of their objectives (for example, the production and supply of public goods and services, the compliance with the laws, the effective use of investment capital and so on). The inspection aims at classifying enterprises, based on operational effectiveness, for the purpose of awards or penalties, in particular for the enterprises' management.

State agencies are required to ensure business autonomy and self-responsibility of the enterprises.

Question 50

Article 15 states that State companies shall have the right to "formulate and apply labour rates, material rates and wage unit prices" independently.

Aside from a minimum wage, will State-owned companies be subject to any administratively-set wage scale?

Answer:

On the basis of the minimum wage regulations, contributions of employees, and the companies' wage and allowance regime, State-owned companies decide on their own the wage payment to each employee. The Government does not interfere in the wage payment of enterprises. The wage and allowance regime are decided by enterprises independently in line with the Labour Code and are used by enterprises as the basis for wage decisions in labour contracts, wage unit prices, wage promotions of employees.

Question 51

Article 26 states that directors' salaries shall "correspond to the operational effectiveness of the company." However, Article 64 also provides that the State owner shall "provide regulations on the regime on wages to the chairman and members of the board of management, and the general director or director of State companies."

Will management wages be administratively-set or depend on the profitability of the company?

Answer:

The salaries of directors are also subject to the above-mentioned principles, i.e. based on the minimum wage regulations, contributions of the managers in the form of profitability of the enterprises, and the wage scale and allowance regime of the company which are in line with the

Labour Code and used by the enterprises as the basis for wage decisions and wage promotions of managers.

III. FRAMEWORK FOR MAKING AND ENFORCING POLICIES

Question 52

This section also needs some revision to reflect enactment of the new Law on Complaint and Denunciation and the anticipated enactment of the Ordinance on Procedures for Settlement of Administrative Disputes. These new laws have significantly changed and improved the circumstance of Viet Nam's policy-making framework.

Answer:

The Law on Amendments of and Additions to some provisions of the Law on Complaints and Denunciation was passed by the National Assembly of the Socialist Republic of Viet Nam on 29 November 2005 and is going into force on 1 June 2006. The Ordinance No. 29/2006/PL-UBTVQH11 on the Amendments of and Additions to some provisions of the Ordinance on Procedure for Resolving Administrative Disputes was passed by the National Assembly's Standing Committee on 5 April 2006 and is going into force on 1 June 2006. These new legislations have added and amended many provisions on complaint, denunciation of administrative decisions, administrative conducts by administrative bodies and commencement of court action against administrative decisions and conducts.

Those amendments and additions are protecting the people's right, increasing State administrative bodies' accountability, clarifying procedures for resolving complaints, extending the right to bring action against administrative decisions and bodies in court and strengthening public awareness and transparency in the course of resolving complaints and administrative proceedings, and at the same time meeting requirements by WTO concerning complaints and appeals.

The corresponding section of the Draft Report has been updated of these changes.

Question 53

We welcome Viet Nam's adoption of the Law on Complaint and Denunciations in December 2005, and an ordinance on procedures for settlement of administrative disputes has now been submitted to the National Assembly for approval. We seek an indication in the Working Party report of the details of this ordinance once adopted.

Answer:

The Ordinance No. 29/2006/PL-UBTVQH11 on the Amendments of and Additions to some provisions of the Ordinance on Procedure for Resolving Administrative Disputes (the Amended Ordinance) had been approved by the Standing Committee of the National Assembly on 5 April 2006, ratified by the president on 27 April 2006 and come into force on 1 June 2006.

This revised ordinance has widen ranges of case within the jurisdiction of the Court (Article 11 of the Amended Ordinance is in accordance with WTO rules). Under which, the Court has the authority to settle disputes concerning issues such as:

- (i) Cases on administrative decisions, administrative actions on issuance or withdrawal of licenses for capital construction, production, business; or professional and business registrations or other administrative decisions, actions concerning operational and financial activities of businesses;

- (ii) Cases on administrative decisions, administrative actions relate to international or domestic trade in goods;
- (iii) Cases on administrative decisions, administrative actions on requisition, compulsory buy, appropriation;
- (iv) Cases on administrative decisions, administrative actions on taxation, tax collection, tax recovering;
- (v) Cases on administrative decisions, administrative actions on application of charges, fees; collection of land using fees;
- (vi) Cases on administrative decisions, administrative actions on governmental management of intellectual property rights and technology transfer;
- (vii) Cases on administrative decisions, administrative actions on governmental management of investment;
- (viii) Cases appeal against decisions on competitive activities;
- (ix) Cases on administrative decisions, administrative actions of customs organizations and authorities; and
- (x) Other cases as stipulated in Viet Nam's laws and in international treaties to which Viet Nam is a member.

Besides, the Ordinance had provided concrete rules concerning procedures, sequences and proceeding to settle administrative cases at the Court in straightforward and transparent manners.

In general, amendments to the Ordinance are in conformity with revised Law on Complaint and Denouncement 2005 and relating rules of WTO.

An unofficial English translation of the Amended Ordinance is available through document WT/ACC/VNM/44/Add.1.

IV. POLICIES AFFECTING TRADE IN GOODS

- Trading Rights

Question 54

We note the positive changes to this section and in Table 8.

Answer:

We thank the Member for the comment.

Question 55

This section should be revised to reflect changes in the same laws mentioned above and implementing decrees that are currently being drafted.

Answer:

Viet Nam has updated this section.

Question 56

Paragraph 128 onwards. General comment: this section needs to be redrafted completely to reflect the contents of the new legislation – it now explains the system based on the old legislation, which is confusing.

Answer:

We have updated the section in accordance with the Commercial Law.

Question 57

We note as well our continuing concern that the right to import requires investment in Viet Nam. We believe that such a requirement creates unjustified barriers to trade that are inconsistent with the requirements of GATT 1994.

Answer:

The right to import only requires a minimal investment in Viet Nam, mainly for the purpose of administration (for example, to make sure that importers comply with generally applied rules on import and tax obligations). They are not intended to create a barrier to trade.

Question 58

We are willing to discuss requirements to engage in activity limited to importation, such as registering as an importer of record and compliance with SPS, TBT, import licensing and other requirements, that are short of a requirement to establish/invest in Vietnam.

Answer:

As indicated, we are mainly concerned with ensuring the importer's compliance with Vietnamese laws. Therefore, we are willing to discuss in order to find a solution that meets both the interest of WP Members and our concern.

Question 59

We appreciate the consolidation of Table 8(a), but would appreciate a further reduction in the number of items covered by the transition period. We remain concerned about trade in goods reserved to State trading and would welcome hearing Viet Nam's intentions concerning reduced use of State trading and its eventual elimination, over time.

Answer:

Viet Nam has further reduced the items covered by the transitional period as shown in the revised Table 8.

Viet Nam only maintains State trading for a few products as listed in Table 8(c) - WT/ACC/SPEC/VMN/5/Rev.2 and has committed to ensure that the activities of State trading enterprises will comply with WTO rules, including Article XVII of GATT 1994 and the Understanding on the interpretation of this Article.

Question 60

If Viet Nam does intend to reduce and/or eliminate State trading in its economy, please describe the processes Viet Nam would use to achieve this goal.

Answer:

Viet Nam only maintains State trading for a few products as listed in Table 8(c) - WT/ACC/SPEC/VMN/5/Rev.2 and has committed to ensure that the activities of State trading

enterprises will comply with WTO rules, including Article XVII of GATT 1994 and the Understanding on the interpretation of this Article.

Question 61

In its answer to Question 94 (WT/ACC/VNM/41), Viet Nam quotes the forms of enterprises allowed to operate in Viet Nam. Why does the Law on Enterprises contain 100 per cent foreign-owned capital as one of the possible forms while another Article in the same law stipulates that enterprises with foreign owned capital shall be deemed to be Vietnamese business entities? Moreover, we did not recognise any Article in this law which clearly explains how a previously "foreign-owned enterprise" becomes a Vietnamese company.

Answer:

The Law on Enterprise only expands its governing scope to contain 100 per cent foreign owned enterprise as one of the possible forms of enterprises allowed to register and operate in Viet Nam. There is no specific provision in the Law which stipulates that 100 per cent foreign owned enterprises shall be deemed as Vietnamese business entities.

Question 62

Viet Nam provided an answer to our Question 95. We unfortunately have to say that we are not satisfied with the answer. The answer "these rules will be developed so as to envision Viet Nam's commitments under the WTO." You mention that decrees providing for detailed rules on trading rights are being drafted. We would like to either request Viet Nam to provide a summary of these decrees or provide for a detailed answer to Question No. 95. In addition, we wish to see a detailed commitment covering the issues raised in this question in the Working Party Report.

Answer:

The draft Decree has been provided to the Working Party for reference. Once the Working Party had agreed on the commitment language for trading rights, Viet Nam will officially promulgate the Decree to that effect.

Question 63

Paragraph 142 WT/ACC/SPEC/VNM/5/Rev.2 and Question 100 of WT/ACC/VNM/41.

We welcome Viet Nam's 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 rights 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.

Answer:

Viet Nam has further reduced the items covered by the transitional period as shown in the revised Table 8 (see Annex III). The remaining transitional period are generally very short (until 1 January 2009).

Question 64

Given changes in legislation in this area, we request a thorough update of this section in relation to procedures required for a foreign company to obtain an investment/business licence for the purposes of engaging in import and export. In particular, we understand the draft implementing regulations of both the Commercial Law 2005 and Investment Law 2005 will regulate applications for business in this sector.

We request details about the process, and confirmation they are no more restrictive than those required for domestic enterprises.

Answer:

We have updated the section in accordance with the Commercial Law.

The procedures for the establishment of foreign invested companies which specialize in trade in goods and other activities directly related to trade in goods in Viet Nam are not more restrictive than those applicable to wholly domestic enterprises in accordance with Viet Nam's commitments on trading rights.

Question 65

With regard to paragraph 142 of WT/ACC/SPEC/VNM/5/Rev.2, we request Viet Nam adopt commitment language in the report as follows:

"Viet Nam agreed that any foreign individual or foreign-invested enterprise that obtains a licence to engage in import activities will be free to select a distributor or distributors of their choice for the internal distribution of imports. Viet Nam will not apply any restrictions on the choice of distributor or distributors, including in relation to the type of enterprise or nationality of the distributor. The Working Party took note of this commitment."

Answer:

The draft Decree guiding the implementation of the Commercial Law on foreign invested enterprises specializing in trade in goods and other activities directly related to trade in goods in Viet Nam provides that "The right to import is the right to import goods from foreign countries into Viet Nam for the purpose of selling to *dealers who have the rights to distribute the goods in Viet Nam...*". Therefore, Viet Nam does not intend to impose any restrictions on the rights to choose the distributors, provided that the distributors are allowed to distribute the goods in Viet Nam.

Question 66

We welcome Viet Nam's improvements in proposed commitments, but continue to seek full trading rights applied upon accession to any legal or natural person.

Answer:

We take note of this comment and are willing to discuss with the interested Members of the Working Party.

Question 67

We note that paragraph 134 of WT/ACC/SPEC/VNM/5/Rev.2 continues to make reference to a number of trading rights limitations (on both export and import) which are given effect through conditions of investment licences. We request Viet Nam update this section to reflect the current legislative situation – in particular, the removal of foreign exchange balancing TRIMs within licences.

Answer:

The Law on the Amendment of and Addition to some Articles of the Law on Foreign Investment 2000 already abolished the foreign exchange balancing requirement. Investment licenses granted after 2000 are not subject to this requirement. In addition, Viet Nam is going to issue the Decree on guiding the implementation of the Commercial Law concerning representative offices and foreign traders' branches in Viet Nam, in which there is no foreign exchange balancing requirement for exports and imports of foreign traders' branches.

Question 68

We also note paragraph 134 of WT/ACC/SPEC/VNM/5/Rev.2 continues to refer to export limitations on foreign-invested enterprises including in relation to "certain exports specified by the Ministry of Trade for particular periods". We seek an explanation from Viet Nam in the report on how these export limitations have been addressed within Decree No. 24/2000/ND-CP or new legislation?

Answer:

Paragraph 134 refers to the old regime which will be replaced by the provisions of the implementing Decrees of the Commercial Law that would be in accordance with Viet Nam's commitments on trading rights.

Question 69

We still have concerns with paragraph 136 of WT/ACC/SPEC/VNM/5/Rev.2 and the fact that foreign-invested firms can not import goods of the same kind they produced under their investment licence. We request that Viet Nam update this paragraph by indicating how new legislation has removed such limitations.

Answer:

The concern raised in paragraph 136 would be addressed by Viet Nam's commitments on trading rights.

Question 70

We note Viet Nam's explanation in the recent Working Party that where it has reserved rights for STEs (i.e., Table 8(c)), wholly-invested Vietnamese enterprises that are not considered STEs will not enjoy trading rights in relation to those products subject to STEs. The current draft of Table 8 does not make this clear. Point 1, for example, suggests that wholly-invested

Vietnamese companies enjoy unlimited trading rights, regardless of the existence of STEs. We suggest that Table 1 be amended under Point 1 to read:

"Viet Nam confirms that wholly Vietnamese-invested enterprises have been granted full right to trade since 1 January 2002, except in relation to those products subject to State trading enterprises (as listed in the attached Table 8(c))."

Answer:

We agree with the amended text. We would also like to note that Point 7 of Table 8 has already provided that the trading rights shall not affect the rights of Viet Nam to adopt, *inter alia*, regulations in accordance with Viet Nam's commitments on State trading.

Question 71

In relation to Table 8 more generally, we ask Viet Nam to ensure that references to "Tables 1, 2 and 3" in this Table remain correct. In particular, "Table 3" in this version of the report concerns "Statistics" and not "STEs".

Answer:

We take note of the comment.

A. IMPORT REGULATIONS

- **Tariff rate quotas, tariff exemptions**

Question 72

Please provide further information in the text on Viet Nam's intentions to use TRQs and information on how they will be administered.

- **For example, will licensing be used?**
- **How will the provisions on transparency and timelines in the WTO Agreement on Import Licensing Procedures be observed?**
- **How will in-quota quantities be allocated?**

Answer:

Regulations on TRQ administration on imported salt, unmanufactured cigarette and eggs are provided for in Circular No. 04/2006/TT-BTM dated 6 April 2006 of the Ministry of Trade guiding Decree No. 12/2006/ND-CP dated 23 January 2006 of the Government.

For sugar, the Ministry of Trade continues applying the import licensing regime in accordance with Decision No. 19/2006/QD-BTM dated 20 April 2006 until the date of accession.

All licensing applied within the TRQ regime will observe WTO's rules, including the WTO Agreement on Import Licensing Procedures.

The quota quantities are allocated in accordance with Viet Nam's Offer on TRQs.

Question 73

Paragraphs 167-168 of WT/ACC/SPEC/VNM/5/Rev.2: This text should be updated in light of the new Investment Law. In particular, have the tariff exemptions described in this paragraph continued under the new Law?

We support the commitment in paragraph 170.

Answer:

Viet Nam has updated these paragraphs in light of the new Law on Investment.

Viet Nam agrees with the commitment in paragraph 170.

Question 74

We note that paragraphs 162-163 of WT/ACC/SPEC/VNM/5/Rev.2 still contain some fundamental concerns to us which have not been addressed. In relation to these paragraphs we suggest the following additional commitment language:

- x. **"The representative of Viet Nam confirmed that from the date of accession, it would refrain from using auctioning as a method of TRQ allocation, would not determine TRQ allocations with reference to their form of business registration, levels of domestic product or export, or on the condition that the importer limit use of such imports for use in its own production. Viet Nam confirmed it would not limit an importer's rights in relation to the internal sale, purchase or transfer of allocated quantities to other parties. The Working Party took note of this commitment."**

Answer:

According to Viet Nam's latest Offer on TRQ, Viet Nam would apply three methods of TRQ administration. As such, auctioning is not referred to a method that would be used.

Viet Nam has committed to observe all WTO's applicable rules in the allocation of TRQ. In addition, Viet Nam will observe its commitments provided in its TRQ Offer, as supplemented by the bilateral agreements with all the interested Members of the Working Party, as from the date of accession.

Question 75

In relation to the TRQ applied on sugar, we seek further information in relation to the quota mechanism to be utilised and administrative arrangements upon accession.

Answer:

Concerning sugar (HS 1701), the Ministry of Trade continues applying the import licensing regime in accordance with Decision No. 19/2006/QD-BTM dated 20 April 2006 until the date of Viet Nam's accession. As from the date of accession, Viet Nam would apply the TRQ on sugar in accordance with its Offer on TRQ, as supplemented by the bilateral agreements with all the interested Members of the Working Party.

Question 76

As to the administration of quotas, we wish to see Viet Nam make the following declarations:

- (a) **That the administration of tariff quotas will be carried out in accordance with WTO rules, specifically excluding the auction method, as it is contrary to the principles of transparency and interferes with the bound tariffs in the Schedules.**
- (b) **Clarification is also in order concerning Government quota allocation method B (paragraph 164 of document WT/ACC/SPEC/VNM/5/Rev.2). The allocation of quotas by the State is inconsistent with the required transparency and predictability in quota administration. Viet Nam states that it does not agree that the allocation of quotas by the Government is inconsistent. Quota administration must be transparent and predictable, and there are methods that guarantee this, for instance the more widely-accepted methods based on commercial considerations, such as first-come first-served or the historical average. We believe that the acceptance of quotas seriously undermines the principles of transparency and predictability.**

Answer:

According to Viet Nam's latest Offer on TRQ, Viet Nam would apply three methods of TRQ administration. As such, auctioning is not referred to a method that would be used.

Viet Nam has committed to observe all WTO's applicable rules in the allocation of TRQ. In addition, Viet Nam will observe its commitments provided in its TRQ Offer, as supplemented by the bilateral agreements with all the interested Members of the Working Party, as from the date of accession.

- **Fees and charges for services rendered**

Question 77

Paragraphs 173 and 176 of WT/ACC/SPEC/VNM/5/Rev.2: These paragraphs appear to indicate that Viet Nam is developing new legislation to ensure that its customs fees are established in a manner to approximate the cost of services rendered.

- **Is there legislation in development to amend the current laws on customs fees? If so, what sort of fee is under consideration? Please indicate the status of this legislation, the next steps in its consideration and when we could see a draft?**
- **Paragraph 176 is a good basis for development of a commitment. Viet Nam's acceptance of this commitment will be facilitated if Viet Nam has indeed developed a new fee structure.**

Answer:

- Yes, Viet Nam is studying the current application of WTO's Members with regard to customs fees, WTO compliance and the applicability to Viet Nam case. In this context, we would appreciate the cooperation of Member in providing their current laws/regulations on customs fees and helping Viet Nam to develop the suitable schedule of customs fees in order to ensure to compensate the service costs and ensure WTO compliance.
- Viet Nam in principle agrees with the proposed commitment language provided that the phrase "[that such fees and charges would be based on unified criteria that would ensure]" be deleted. We would like correct Paragraph 176 as follows:

"176. The representative of Viet Nam confirmed that from the date of accession Viet Nam would apply all fees and charges for services rendered applied on or in connection with importation or exportation, including those discussed in paragraphs

[... and ...] above, in conformity with relevant provisions of the WTO Agreements, in particular Articles VIII and X of the GATT 1994. He further confirmed that they were limited to the approximate cost of services rendered. He added that the practice of higher special fees for some imports would be eliminated and that fees that varied based on the value or volume of imports or applied for revenue purposes would be eliminated upon accession or revised to conform with the provisions of Article VIII. He further confirmed that information regarding the application and level of any such fees, revenues collected and their use would be provided to WTO Members upon request. The Working Party took note of these commitments."

Question 78

Paragraph 173 of WT/ACC/SPEC/VNM/5/Rev.2 and Question 142 of WT/ACC/VNM/41. We note Viet Nam's confirmation that it is reviewing its customs processing fees and will adjust them to conform with the WTO rules upon accession.

Answer:

Viet Nam confirms this understanding.

- **Application of internal taxes to imports**

Question 79

Excise Taxes: We believe progress is being made towards WTO consistency in Viet Nam's excise tax regime. However, there is still work to be done.

Answer:

We take note of the comment.

Question 80

We note the discrepancy in the SCT schedule for tax rates on spirits between Ministry of Finance Circular No. 115-2005-TT-BTC and Table 10 of WT/SPEC/VNM/5/Rev.2. Circular No. 115 specifies that the 30 per cent tax rate is applied to spirits from 20 per cent to below 40 per cent alcohol content by volume and the 65 per cent tax rate is applied to spirits with alcohol content from 40 per cent and above by volume. Table 10 indicates that the 65 per cent rate is applied to spirits with alcohol content above 40 per cent by volume while the 30 per cent rate is applied to spirits containing alcohol content from 20 per cent by volume to 40 per cent. We understand that Viet Nam is applying the tax rates according to the schedule in Circular 115.

Please explain the discrepancy between Circular 115 and Table 10.

Answer:

Yes, there were typing errors in Table 10. The correct excise tax rates are as described in Circular 115:

- Spirits from 40 per cent alcohol content and above: 65 per cent; and
- Spirits from 20 per cent to below 40 per cent alcohol content: 30 per cent.

Question 81

We note that Viet Nam's domestic spirits industries produce vodkas and whiskeys at 39 per cent alcohol content by volume. In several WTO dispute settlement cases, excise tax rate schedules like Viet Nam's three bands for spirits (see Table 10 of WT/SPEC/VNM/5/Rev.2) have been found to be inconsistent with GATT Article III. We welcome Viet Nam's proposals as to how it intends to apply excise taxes to spirits in a manner that complies with WTO requirements. For a proposal to be acceptable, it will have to apply tax rates that are equivalent across major categories of distilled spirits and insure that domestic production is taxed at an equivalent rate with competitive imports. One methodology that the WTO has found consistent with Article III is the application of an excise tax rate based on the percentage of alcohol in the beverage.

Answer:

Viet Nam is willing to discuss with the interested Members of the Working Party on this issue to arrive to a mutually agreeable solution.

Question 82

Paragraph 183 of WT/ACC/SPEC/VNM/5/Rev.2 states that excise taxes on beer will be equalized, but Table 10 shows that this has not occurred as a result of the latest law. Viet Nam is still applying excise tax rates to beer, one for bottled and canned beer, and one for draft and draught beer. While we appreciate the unification of rates for the latter two categories, we would like to know when Viet Nam will equalize the excise tax for all beer.

Answer:

Prior to the 11th Working Party Meeting, the Members of the Working Party only raised the question on unifying the excise duties between draught beer and draft beer. As a result, we have submitted to the National Assembly to amend the Law on Excise Tax to this effect. It is unfortunate that only later this issue was raised, after Viet Nam's National Assembly has already adopted the Law on Excise Tax to meet with Viet Nam's WTO obligations. However, with regard to this newly raised issue, Viet Nam is willing to discuss with the interested Members of the Working Party in order to arrive to a mutually agreeable solution.

Question 83

Paragraph 189 of WT/ACC/SPEC/VNM/5/Rev.2: We reserve comment on this text, until we have a clearer idea of what Viet Nam is prepared to do to implement Article III of the GATT with respect to these products.

Answer:

Viet Nam is willing to discuss with the interested Members of the Working Party in order to arrive to a mutually agreeable solution. Paragraph 189 will then be restructured accordingly.

Question 84

Paragraph 184 and Table 10: We note the considerable raise of excise duty rate as regards spirits of 40 per cent and 41 per cent of alcohol. The increase of the tax is from 30 per cent to 65 per cent, even if there is only 1 per cent difference in the alcohol rate.

We have information indicating that the excise tax treatment of spirits constitutes a de facto discrimination of imported products *vis-à-vis* directly substitutable domestically produced spirits (which have an alcohol percentage of 39 per cent). We would therefore urge Viet Nam to consider an excise tax that would take more into account the real difference of the rate of alcohol (like amount per percentage of alcohol), or device a rate for spirits of more than 40 per cent alcohol that is less drastic and more proportional than the current sharp increase from 30 to 65 per cent.

Answer:

Viet Nam is willing to discuss with the interested Members of the Working Party in order to arrive to a mutually agreeable solution.

Question 85

Paragraph 189 of WT/ACC/SPEC/VNM/5/Rev.2: Spirits should also be added to the products listed in this paragraph.

Answer:

Viet Nam is willing to discuss with the interested Members of the Working Party in order to arrive to a mutually agreeable solution.

Question 86

We note major concerns with differential excise rates on alcoholic beverages. In particular, the excise tax applied to spirits with 40 per cent alcohol content is 65 per cent – more than double that applying to spirits of 20-40 per cent alcohol content. This threshold of 40 per cent corresponds to the ceiling on most local spirits production, while imported spirits are generally above 40 per cent in alcohol content. This is a violation of non-discriminatory treatment of like product under Article III and a *de facto* import restriction. We request Viet Nam to come forward with a proposal to address this concern – in particular, a proposal in relation to a uniform rate of excise across all spirits. In doing so, we would request that Viet Nam consider the use of a specific excise duty and not an *ad valorem* duty, as this would be have advantageous for it in ensuring appropriate levels of revenue and preventing under-invoicing.

Answer:

Viet Nam is willing to discuss with the interested Members of the Working Party in order to arrive to a mutually agreeable solution.

Question 87

We note outstanding differences in excise taxes applied to bottled beer and other kinds of beer in Table 10. We ask that Viet Nam indicate in the report when it will equalise excise rates on these like products to ensure consistency with Article III of GATT1994.

Answer:

Prior to the 11th Working Party Meeting, the Members of the Working Party only raised the question on unifying the excise duties between draught beer and draft beer. As a result, we have submitted to the National Assembly to amend the Law on Excise Tax to this effect. It is unfortunate that only later that this issue was raised, after Viet Nam's National Assembly has already adopted the Law on Excise Tax to meet with Viet Nam's WTO obligations. However, with regard to this newly raised issue,

Viet Nam is willing to discuss with the interested Members of the Working Party in order to arrive to a mutually agreeable solution.

Question 88

We appreciate Viet Nam's statement in paragraph 186 of WT/ACC/SPEC/VNM/5/Rev.2, that it had exempted imported products from VAT to ensure consistency with Article III. We request that Viet Nam provide a list of products by six-digit HS code that is subject to this exemption.

Answer:

Pursuant to the Law on the Amendment of and Addition to Some Articles of the Law on VAT in 2003 and the Law on the Amendment of and Addition to Some Articles of the Law on VAT and the Law on Excise Tax in 2005, the following goods and services shall not be subject to value added tax:

1. Products of cultivation, husbandry or aquaculture which have not yet been processed into other products or which have only been semi-processed by organizations or individuals producing and selling such products and imports;
2. Animal breeds and plant breeds;
3. Salt products;
4. Specialized machinery, equipment or means of transportation which form part of a technological process or construction materials which are not yet able to be produced domestically and are required to be imported to form the fixed assets of enterprises; aircraft, drilling platforms or watercraft leased from foreign parties which are not yet able to be produced domestically used for production or business; equipment, machinery, replacement parts, specialized means of transportation and supplies which are required to be imported in service of prospecting, exploration and development of petroleum fields and which are not yet able to be produced domestically;
5. Sales of State-owned houses by the State to existing tenants;
6. Transfers of land use rights;
7. Credit services, investment funds and securities trading activities;
8. Life insurance; student insurance; insurance of animals and plants and non-profit-making insurance activities;
9. Medical services;
10. Non-profit-making cultural, exhibition and sports activities; artistic performances, film production; import, publication and screening of film footage and documentary videos;
11. Education and vocational training;
12. Radio and television broadcasting according to programmes funded by the State Budget;
13. Printing, publication, import and distribution of newspapers, magazines, specialized newsletters, political books, textbooks, teaching materials, books on legislation, books printed in languages of ethnic minorities, propaganda pictures, photos and posters; Printing of money;
14. Public services of cleaning and water drainage in urban areas and residential areas, maintenance of zoos, flower gardens, parks, trees in streets, public lighting systems and funeral services;
15. Repair, renovation and construction of cultural and artistic works, public works, infrastructure and welfare housing funded by public contribution and humanitarian aid;
16. Public passenger transportation by bus; electrical bus;
17. Geological surveys, exploration, measuring and formulation of maps, which can be characterized as basic surveys of the State;
18. Water supply and drainage serving agricultural production; clean water produced by organizations and individuals for consumption in rural, mountainous and island areas and remote and distant regions;
19. Specialized arms and weaponry required for national defence and security;

20. Imported goods in the following cases: humanitarian aid, non-refundable aid; gifts to State bodies, political organizations, socio-political organizations, social organizations, socio-professional organizations; units of the people's armed forces; donations and gifts to individuals in Viet Nam within the limits stipulated by the Government, personal effects of foreign organizations and individuals under diplomatic immunity regulations; hand luggage within duty-free limits; goods to be sold to international organizations and foreign individuals for humanitarian and non-refundable aid to Viet Nam;
21. Goods in transit or transshipment or crossing Vietnamese borders; goods temporarily imported and re-exported and goods temporarily exported and re-imported;
22. International transportation, goods and services provided directly for international transportation and re-insurance to abroad;
23. Technology transfers; software;
24. Post and Telecommunication services and universal internet program in accordance with Government's plan;
25. Gold imported in bars and foils which are not yet processed into fine art articles, jewellery or other products;
26. Certain exported unprocessed minerals to be stipulated in detail by the Government;
27. Products that are man-made substitute for human parts of patients; crutches and other specialized equipments for invalid people; and
28. Goods and services of business individuals having low income levels. Low income levels shall be stipulated by the Government.

The list of products not subject to value added tax by six-digit HS code is not available.

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

Question 89

We are concerned about several quantitative restrictions being applied in relation to alcohol:

- (i) **In particular, we understand authorised importers may only import US\$ 300,000 of distilled spirits per annum which does not apply to other alcohol. Viet Nam has indicated that this is not the case. We therefore suggest the following paragraph be added to the report.**
 - x. **A Member raised a concern that Viet Nam was restricting the importation of distilled spirits by authorised importers to only US\$ 300,000 per annum. This, in the Member's view, did not apply to other alcohol. In response, the representative of Viet Nam indicated that such a restriction did not apply, and agreed that it would refrain from applying any quantitative restriction on imports of distilled spirits. The Working Party took note of this commitment.**
- (ii) **We are concerned that Ho Chi Minh City has banned the sale and consumption of liquor over 30 per cent within its city limits, which again effectively prohibits imported spirits (which are generally above 40 per cent alcohol content), while allowing considerable local production (ie within the 20-30 per cent alcohol limit) to be traded. Such a ban on sale of alcohol above 30 per cent alcohol content also undermines the value of bound concessions Viet Nam has provided in relation to market access for such produce into Viet Nam as a whole. We request that Viet Nam repeal these provisions within Ho Chi Minh City.**

Answer:

- (i) Viet Nam does not maintain any quantitative restriction on the import of distilled spirits.

- (ii) Alcohol is strictly regulated and is not encouraged in Viet Nam. The Vietnamese government may, according to the actual situation in a locality during a certain period, set up various appropriate measures, including the limitation on the number of the liquor selling licenses.

According to Decision No. 93/2005/QD-UBND of Ho Chi Minh City People's Committee dated 9 June 2005 regulating a number of business sectors and services that are sensitive in the sense that they may give rise to the social evils, Ho Chi Minh City authority has temporarily ceased the allocation of new liquor selling licenses within District 1 (applicable to all drinks with over 30 per cent alcohol content, regardless of imported or domestic origins). The reason was that there had been too many liquor sellers within the area of District 1. Other sellers who have been granted the liquor selling licenses are still allowed to continue with their business as normal.

We consider any request to remove this measure as unreasonable as it is detrimental to the social development.

Question 90

Paragraph 195 of WT/ACC/SPEC/VNM/5/Rev.2: As regards import prohibition of motorcycles with engine capacity exceeding 175cm³, we welcome Viet Nam's 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 and would be happy to hear from Viet Nam what is the current situation in this respect. – the proposal to consider non-automatic licensing is not reflected in the text of the Working Party Report.

Answer:

Viet Nam has already replaced the import ban on motorcycles with engine capacity exceeding 175cc by a automatic licensing regime to help screening users and buyers of these motorcycles in accordance with Viet Nam's domestic regulations.

Question 91

Paragraph 196 of WT/ACC/SPEC/VNM/5/Rev.2 and Questions 167 and 168 of WT/ACC/VNM/41: As regards the replacing the import prohibition of used motor vehicles with an import quota, we thank Viet Nam for submitting information on the domestic registrations and production, and the explanation given on the tariff schedules as regards used motor vehicles. We will submit our comments on these points at a later stage.

Answer:

Used motor cars have been allowed to be imported into Viet Nam as from 1 May 2006. We are looking forward to receiving the comments as soon as possible.

Question 92

We note inconsistencies between this section in relation to chemical imports and the section on investment. In particular, there is a list of chemicals in Table 12(a) that are prohibited and a list in 12(b) that are allowed to be imported on certain conditions. Table 1 in Annex 2 of the report, by contrast, indicates that business in either "toxic chemicals (second row)" or "chemical substances of high toxicity (fifth row)" is prohibited. We suggest Viet Nam clarify in the Investment section exactly which kinds of chemicals are considered prohibited and which can be traded subject to conditions established in the quantitative import restrictions section.

Answer:

There is a translation error here. "Toxic chemicals" in Item 2 of Table 1 are actually "toxic materials" that are in the same grouping with explosives and radioactive substances, those that have fatal or very serious effect. Those prohibited mentioned in Table 11 and 12 correspond to Item 6 of Table 1 which refers to "chemical substances of *high* toxicity".

Table 12(a) correspond to Item 6 of Table 1. Table 12(b) are chemicals that are toxic but not considered as "of high toxicity". Therefore, conducting business, including importation, is allowed, though with certain conditions such as having adequate handling facilities.

Question 93

We understand that Viet Nam intends to extend import licensing to additional products, e.g. some that are now banned. We would appreciate updated information, in the format of the questionnaire, on the licensing program for these products, when that information is available.

Answer:

Motorcycles with engines exceeding 175cc has been added to the list of products subject to licensing. The procedures are automatic (i.e. no limitation on the quantity or value of the imports), based on criteria specified by the Ministry of Public Security in order to screen the prospective buyers/users. However, detailed criteria are still in progress.

Question 94

Viet Nam has come a long way in addressing Working Party members' concerns over its system of import bans and other restrictions. We believe that these efforts are ongoing and that the current text should be updated to reflect the most recent changes and proposals.

- **In particular, we understand that the regime with regard to motorcycles (paragraph 195), goods with encryption (paragraph 199), and dangerous chemicals (paragraph 201) is changing.**
- **The definition of superstitious and depraved goods provided in paragraph 198 is unclear. We would appreciate a more precise, legal definition of both words as they apply to the goods identified in this paragraph. We would also appreciate information in the report on how this provision has been applied in practice. What goods have been permitted entry and what goods have been prohibited from entering Viet Nam.**

Answer:

- Motorcycles with engines exceeding 175cc has been added to the list of products subject to licensing. The procedures are automatic (i.e. no limitation on the quantity or value of the imports), based on criteria specified by the Ministry of Public Security in order to screen the prospective buyers/users. However, detailed criteria are still in progress. As for specialised encryption machines and encryption software subject to State secret and chemicals, Tables 11 and 12 had been revised to reflect the regulating regime. Viet Nam is willing to work with the Members of the Working Party to better reflect these changes into the Draft Report.

- Concerning the definition of "superstitious cultural products" and "pornographic cultural products":
 - "Superstitious cultural products" are cultural products (including books, newspapers, documents, paintings, photographs, posters, works of art, audio tapes, records, CDs, video tapes, VCDs, DVDs, floppy disks, hard disks, photo disks with information in writing, sounds, and pictures) which show pictures or sounds or contents that cause paranoia, go against nature, or enchant other people to commit crimes or go against the law;
 - "Pornographic cultural products" are cultural products that contain contents, pictures or sounds describing in detail sex acts or nudes with explicit intentions of sexual arousal or erotic stimulation, for instance intercourses or masturbations between sex organs, between sex organ(s) and mouth(s), between mouth(s) and anus(es), between human and animal sex organs, or acts of forced sex, rapes, child sex, sex orgies, incest (such as between a parent and his or her child).
- Concerning the application in practice of the regulations:
 - Cultural products that violate regulations concerning prohibited circulation and popularization in Viet Nam shall not be allowed to be imported into Viet Nam. Such products include superstitious, pornographic and reactionary cultural products. These regulations have been detailed in the legal documents such as the Law on Publishing, the Law on the Press, the Ordinance on Advertising, the Decree No. 88/2002/ND-CP of 7 November 2002 on the management of the import and export of cultural products for non-profit purposes, and Circular No. 48/2006/TT-BVHTT of 28 April 2006 by the Ministry of Culture and Information guiding the implementation of Decree No. 12/2006/ND-CP. (Please find enclosed the list of legal documents with stipulations on cultural products prohibited from popularization, production or import in Viet Nam in Annex I);
 - State culture and information management agencies shall base themselves on the specific provisions of the legal documents in the above-mentioned list to evaluate the cultural content of a cultural product and determine whether it is to be prohibited from popularization, production in Viet Nam or importation into Viet Nam. Written confirmation from those State management agencies can be produced to this effect. This regulation applies generally and presents no prejudice against any organization, individual and economic sector at home and abroad.

Question 95

We thank the delegation of Viet Nam for its submission of replies in response to the WTO Import Licensing Questionnaire. We would appreciate additional substantive information on how the Viet Nam's import licensing system operates, including the role of line-management agencies in granting the import licenses.

Answer:

Viet Nam issued Decision No. 41/2005/QD-TTg dated 2 March 2005 promulgating the Regulations on import licensing regime, including general provision and forms of import licensing. It has taken effect since 1 September 2005.

Information on line management has been provided in Table 13 of the Draft Report. It is noted that not all line-management measures involve import licensing procedures. For measures that involve automatic licensing, the agency in charge, as specified in Table 13, is responsible for issuing the licence.

Question 96

In regards to the line management licensing, in the answer to Question 1(a) under "IV. Eligibility of Importers to Apply for Licence," the answer for non-TRQ goods states, "licenses are given to all traders who have been registered as traders of the corresponding goods." Is there a registration fee? Is there a list of authorized traders? Are all importers applying to register as traders automatically approved?

Answer:

As for the list of authorized traders, according to Article 2 of Decision No. 41/2005/QD-TTg dated 2 March 2005 of the Prime Minister, any organizations and individuals entitled to import goods in accordance with laws are eligible to apply for an import licence, provided that they have completed their appropriate business registration (which is simple and transparent). As it is "registration", no "approval" is involved.

Question 97

In regards to the line management licensing, in the answer to Question 1(a) under "VI. Documentation and Other Requirements for Application for License," the answer states "the type of information required in an application form and the necessary documents to be attached to it varies among different sectors." For every Item under the line management licensing system, please specify the type of information that is required.

Answer:

As it has been indicated, the type of information varies according to the particular type of product under management. The information required is contained in the legal documents issued by the responsible agencies and is published in the Official Gazette.

Question 98

In regards to the line management licensing, in the answer to Question 3 under "VI. Documentation and Other Requirements for Application for License," the answer states, "Currently, there is no licensing fee or administrative charge." Is it expected that there will be a fee or administrative charge in the near future? If so, please identify the fee and the date the fee, if any, will come into effect.

Answer:

Licensing fees are regulated in the forms of a specific amount in order to compensate services rendered:

- Licensing fees for import and export of cultural products pursuant to Decision No. 03/2000/QD-BTC dated 21 December 2000 are 50,000 VND/licence for commercial transactions and 20,000 VND/licence for non-commercial products (regardless of value and volume of imports);
- Import licensing fee for imported plant protection medicine and materials making it is 200,000 VND/licence in accordance with Circular No. 110/2003/TT-BTC dated 17 November 2003; and
- Fee for granting the quarantine certificate for animals and animal products imported, exported, transited, temporary import for export and temporary export for import (regardless of quantity and kinds) is 50,000 VND/time in accordance with Decision No. 08/2005/QD-BTC dated 20 January 2005.

Question 99

In regards to Question 1 under "VII. Conditions of Licensing," the answer states "there is no concrete provision on the validity period of a licence from the date of the issue." Does this mean that the conditions depend on the product or the trader applying for the import license? The answer also states "they are normally given upon the demand of the applicants" and that "the validity period of a licence can be extended in justifiable cases." Please clarify this information and identify situations that are "normal" and "justifiable."

Answer:

The validity period of a licence is normally for one year. Application for extension can be lodged and accepted if the reasons for extension as provided by the trader is appropriate. However, as the procedures are automatic, extension is not sought by traders in practice. They can instead apply for a new licence without difficulty. As a result, Viet Nam does not have regulations on such extension.

Question 100

We note that Table 13V identifies the Ministry of Culture and Information as responsible for Line Management and issuance of automatic import licenses for printed material. Please describe the process and fees for issuance of automatic import licenses by the Ministry of Culture and Information.

Answer:

Pursuant to the Law on Publishing, Law on the Press, Decree No. 12/2006/ND-CP of 23 January 2006 by the government, Circular No. 48/2006/TT-BVHTT of 28 April 2006 by the Ministry of Culture and Information guiding the implementation of Decree No.12/2006/ND-CP, Decision No. 41/2005/QD-TTg of 2 March 2005 by the Prime Minister on regulations for licensing the import of goods, and other related legal documents, printed materials are specialized culture-information products subject to line management by the Ministry of Culture and Information. Traders may apply to the local Department of Culture and Information who will assess if the printed materials are in accordance with the above-mentioned legal documents.

Licensing fees for import and export of cultural products pursuant to Decision No. 03/2000/QD-BTC dated 21 December 2000 are 50,000 VND/licence (about US\$ 3) for commercial transactions and 20,000 VND/licence (about US\$ 1.2) for non-commercial products, regardless of value and volume of imports.

Question 101

The final sentence of paragraph 198 (WT/ACC/SPEC/VNM/5/Rev.2) states that "Competent State management agencies ...assessed whether a cultural product was superstitious, reactionary, or depraved..." Please identify State management agencies other than the Ministry of Culture and Information that participate in this evaluation. What laws other than the Commercial Law, the Law on the Press, and the Law on publication apply to imports of these products?

Answer:

The Ministry of Culture and Information has specialized management bodies under the Minister of Culture and Information to carry out State management over the areas of the press, publishing, the cinema, fine arts, photography, and performing arts, among others. Such bodies include the

Department of the Press, Department of Publishing, Department of the Cinema, and Department of Performing Arts.

The Ministry of Culture and Information authorizes the departments of culture and information under the provincial or municipal people's committees to carry out State management of the press, publishing, the cinema, etc. to evaluate the content of some types of cultural products (such as music, theatre or fashion videos or records, or audio or visual products of types other than cinematic works) and determine whether such products subject to prohibition of popularization, production or import in Viet Nam.

The main legal documents are: the Law on Publishing, Law on the Press, Decree No. 12/2006/ND-CP of 23 January 2006 by the government, Circular No. 48/2006/TT-BVHTT of 28 April 2006 by the Ministry of Culture and Information guiding the implementation of Decree No. 12/2006/ND-CP, Decision No. 41/2005/QD-TTg of 2 March 2005.

Question 102

What are the specific criteria used by these agencies to reach a determination that a product is "superstitious, depraved, or reactionary?"

Answer:

Cultural products that violate regulations concerning prohibited circulation products and popularization in Viet Nam shall not be allowed to be imported into Viet Nam. Such products include superstitious, pornographic and reactionary cultural products. These regulations have been detailed in the legal documents such as the Law on Publishing, the Law on the Press, the Ordinance on Advertising, the Decree No. 88/2002/ND-CP of 7 November 2002 on the management of the import and export of cultural products for non-profit purposes, and Circular No. 48/2006/TT-BVHTT of 28 April 2006 by the Ministry of Culture and Information guiding the implementation of Decree No. 12/2006/ND-CP. (Please find enclosed the list of legal documents with stipulations on cultural products prohibited from popularization, production or import in Viet Nam in Annex II).

State culture and information management agencies shall base themselves on the specific provisions of the legal documents in the above-mentioned list to evaluate the cultural content of a cultural product and determine whether it is to be prohibited from popularization, production in Viet Nam or importation into Viet Nam. Written confirmation from those State management agencies can be produced to this effect. This regulation applies generally and presents no prejudice against any organization, individual and economic sector at home and abroad.

Question 103

Concerning Viet Nam's import licensing regime, we appreciate the additional information provided in WT/ACC/VNM/40, and would like to see it updated to include any new licensing requirements provided for in new legislation.

Answer:

Motorcycles with engines exceeding 175cc has been added to the list of products subject to licensing. The procedures are automatic (i.e. no limitation on the quantity or value of the imports), based on criteria specified by the Ministry of Public Security in order to screen the prospective buyers/users. However, detailed criteria are still in progress.

Question 104

We would appreciate information on the fees charged for licenses and the new line management system noted in paragraphs 203 and 206 (WT/ACC/SPEC/VNM/5/Rev.2).

Answer:

Licensing fees are regulated in the form of a specific amount in order to compensate services rendered:

- Licensing fees for import and export of cultural products pursuant to Decision No. 03/2000/QD-BTC dated 21 December 2000 are 50,000 VND/licence for commercial transactions and 20,000 VND/licence for non-commercial products (regardless of value and volume of imports);
- Import licensing fee for imported plant protection medicine and materials making it is 200,000 VND/licence in accordance with Circular No. 110/2003/TT-BTC dated 17 November 2003.
- Fee for granting the quarantine certificate for animals and animal products imported, exported, transited, temporary import for export and temporary export for import (regardless of quantity and kinds) is 50,000 VND/time in accordance with Decision No. 08/2005/QD-BTC dated 20 January 2005.

Question 105

We suggest a review of WT/ACC/VNM/40 to revise it in light of impending additional licensing requirements, e.g. for motorcycles.

Answer:

Motorcycles with engines exceeding 175cc has been added to the list of products subject to licensing. The procedures are automatic (i.e. no limitation on the quantity or value of the imports), based on criteria specified by the Ministry of Public Security in order to screen the prospective buyers/users. However, detailed criteria are still in progress.

Question 106

The descriptive text of this section needs revision.

Answer:

We take note of this comment.

Question 107

We note that reform of the line management is still pending and seek details on when that will occur. We suggest Viet Nam provide additional material on these reforms.

Answer:

We will provide additional information when it is available.

Question 108

We note that investment licence conditions contain quasi-limitations on ability to export or import. We request Viet Nam to provide implementing regulations in relation to investment licences in order to complete this section of the report.

Answer:

Under the Law on Investment, the provisions for investment licenses have been replaced by those for investment certificates. Viet Nam confirms to apply conditions for investment certificates in a consistent manner with its commitments on trading rights.

Question 109

We also note that in the introductory paper, Viet Nam notes that it will "regularly review, reassess all or part of the business conditions, revoke or suggest revoking the inappropriate conditions, amending or suggesting amending the irrational conditions". We seek additional information on the procedure underpinning such reviews and criteria for any changes.

Answer:

This procedure is stipulated in Article 7.4 of the Law on Enterprise. Accordingly, the Government will review, reassess this provision of the Law and Implementing Decrees with other laws, ordinances and decrees relating to the business conditions to identify conditions which are overlapping, conflicting or hindering the operation of enterprises. Based on results of such review, the Government either revokes, amends or suggests the National Assembly/the Standing Committee of the National Assembly to revoke or amend inappropriate conditions. The amendment and revocation of the business conditions provided in the above-mentioned documents will be compliant with the procedures provided in the Law on the Promulgation of Legal Normative Documents.

- **Customs valuation**

Question 110

We have reviewed "Decision No. 192/TCHQ/KTTH on promulgating regulations on application of dutiable value of goods for import and export tax" (promulgated in 1995), "Decision No. 590A/QD/BCT on the promulgation of the Table of Dutiable Values" (promulgated in 1998), and "Decision No. 155/1998/QD-TTg on issuing regulations on determination of dutiable value of imports and exports" (promulgated in 1998). We initially note that the laws repeatedly refer to "minimum dutiable values" and "minimum prices" for customs valuation purposes. However, it is our understanding that minimum prices were eliminated by Circular No. 87 (August 2004).

Please confirm that minimum prices have, in fact, been eliminated in accordance with Article 7 of the Agreement.

Answer:

Customs Valuation Determination under Minimum Price has been abolished by Circular No. 87/2004/TT-BTC of Ministry of Finance dated 31 August 2004.

Question 111

We have reviewed "Law No. 45/2005/QH11 amending Law No. 29/2001/QH10" promulgated during November 2005 and designated as complying with Article 13 of the Agreement. Article 13 of the Agreement provides that if, in the course of determining the customs value of imported goods, it becomes necessary to delay the final determination of such customs value, the importer of the goods shall nevertheless be able to withdraw them from customs if, where so required, the importer provides sufficient guarantee in the form of a surety, a deposit or some other appropriate instrument, covering the ultimate payment of customs duties for which the goods may be liable. The legislation of each Member shall make provisions for such circumstances.

What portion of Law No. 45/2005/QH11 addresses this requirement?

Answer:

Article 13 set fourth in Agreement on Customs Valuation has been prescribed in detail in Article 16 of Decree No. 155 (Delay on tax valuation).

Question 112

We have reviewed "Ordinance on Procedures for Settlement of Administrative Cases" to be promulgated during March of 2006. The law prescribes procedures for administrative cases and purports to comply with Article 11 of the Agreement. It provides that: (1) the legislation of each Member shall provide in regard to a determination of customs value for the right of appeal, without penalty, by the importer or any other person liable for the payment of the duty; (2) an initial right of appeal without penalty may be to an authority within the customs administration or to an independent body, but the legislation of each Member shall provide for the right of appeal without appeal to a judicial authority; and (3) notice of the decision on appeal shall be given to the appellant and the reasons for such decision shall be provided in writing. The appellant shall also be informed of any rights of further appeal.

We note that Article 17 of the Ordinance grants assurance of a "two-level adjudication principle" (i.e. a right to appeal) in administrative cases. Article 24, paragraph 12 gives the appellate authority jurisdiction over "complaints against administrative decisions or administrative actions of customs agencies and customs officers."

- (a) Please confirm that the importer or other person liable for the payment of duty in customs valuation cases may appeal initial determinations without penalty?
- (b) Please also confirm that the notice of decision on appeal shall be given to the appellant and the reasons for such decision will be provided in writing?

Answer:

In compliance with Article 11 of the Customs Valuation Agreement, the contents of complaint and appeal have been stipulated in the Law on Complaint and Denunciation (last amended in 2005) and the Ordinance on the Procedures for the Settlement of the Administrative Cases (last amended in 2006). The importer or other person liable for the payment of duty in customs valuation cases may appeal initial determinations without penalty.

According to laws in force in Viet Nam, decision on the cases shall be sent to the defendant. Article 17.d of the Law on Complaint and Denouncement stipulates that the complainant has the right:

"to receive acknowledgement note that confirms a handling of the case; to know information, to obtain document, document on handling of the case..."

Question 113

To complete our legislative review, we would appreciate receiving English language translations of the following documentation on Customs Valuation:

- **Circular No. 118-2003-TT-BTC providing guidelines on Decree No. 60-2002-ND-CP on determination of dutiable price of imported goods subject to import duties in conformity with principle of the Agreement on implementation of Article 7 of the GATT (2003); and**
- **Decision No. 1361-QD-TCHQ-KTTT on regulations on review of dutiable prices in accordance with WTO Customs Valuation Methods.**

Answer:

Circular No. 118/2003 and Circular No. 87/2004 by Ministry of Finance were no longer in effect. They were replaced by Circular No. 113/2005/TT-BTC dated 15 December 2005.

Unofficial English translations of the above Circular and the following legislations have been submitted to the Secretariat (document WT/ACC/VNM/44/Add.1):

- Circular No. 87/2004/TT-BTC of 31 August 2004 guiding implementation of the Law "On Export and Import Tariffs";
- Circular No. 118/2003/TT-BTC on guiding implementation of Decree No. 60/2002/ND-CP dated 6 June 2002 providing valuation on imports in accordance with the Agreement on implementation of Article 7 of GATT 1994;
- Circular No. 113/2004/TT-BTC of 15 December 2005 on guiding implementation of the Law on Export and Import Tariffs;
- Decree No. 154/2005/ND-CP dated 15 December 2005 by the Government guiding implementation of some articles of the Customs Law relating to customs procedures, customs inspection and supervision;
- Circular No. 114/2005/TT-BTC dated 15 December 2005 by Ministry of Finance on guiding imports-exports post customs clearance audit.

Question 114

Decree on Customs Valuation of Import and Export Goods (No. 155/2005/ND-CP), Chapter II – Methods of Determining Customs Values for duty Assessment of Imported Goods

Article 7 – Customs Valuation Based on Transaction Value of Imported Goods

Article 7, paragraph 2, of Viet Nam's legislation generally seems to track the requirements of Article 1, paragraph 1, of the WTO Agreement (hereinafter, the "Agreement"). However, could Viet Nam clarify whether, under subparagraph (c), no part of the proceeds of any subsequent resale, disposal or use of the goods by the buyer will accrue directly or indirectly to the seller for purposes of transaction value unless an appropriate adjustment is made?

Answer:

Item 2, Article 7, Decree No. 155/2005/ND-CP stipulates conditions to apply Customs valuation determination based on transaction valuation of import and export goods. Point c) of this Item can be

understood that any payment directly or indirectly from the process of disposal or reuse of goods, except from appropriate adjustments.

Question 115

Decree on Customs Valuation of Import and Export Goods (No. 155/2005/ND-CP), Chapter II – Methods of Determining Customs Values for duty Assessment of Imported Goods.

Article 8 – Customs Valuation Based on the Transaction Value of Identical Imported Goods.

Could Viet Nam confirm which portion of its legislation relates to Article 2, paragraph 1(b), of the Agreement which requires, in part, that "[w]here no such sale is found, the transaction value of identical goods sold at a different commercial level and/or in different quantities, adjusted to take account of differences attributable to commercial level and/or to quantity, shall be used, provided that such adjustments can be made on the basis of demonstrated evidence which clearly establishes the reasonableness and accuracy of the adjustment, whether the adjustment leads to an increase or decrease in value"?

Answer:

Items 1 to 3 , Provision III, Annex 1, Circular No. 113 specifying in details Item 2, Article 8 and Article 9 of the Decree No. 155 (stipulates the difference of imports).

Question 116

Decree on Customs Valuation of Import and Export Goods (No. 155/2005/ND-CP), Chapter II – Methods of Determining Customs Values for duty Assessment of Imported Goods

Article 10 – Customs Valuation Based on the Deductive Value

Could Viet Nam clarify this Article and explain how it relates to Article 5 of the Agreement? For example, Article 5(1)(a) of the Agreement provides for certain deductions from deductive value. Are such amounts to be deductions from (or additions to) deductive value under Viet Nam's provision?

Answer:

Article 10, Decree No. 155 prescribes the customs valuation based on deductive value, in accordance with Article 5 of the Customs Valuation Agreement. Item 3, Article 10, Decree No. 155 prescribes deductions from deductive value provided in Article 5.1 (a) from (i) to (iv) of the Customs Valuation Agreement.

Question 117

Decree on Customs Valuation of Import and Export Goods (No. 155/2005/ND-CP), Chapter II – Methods of Determining Customs Values for duty Assessment of Imported Goods.

Article 11 – Customs Valuation Based on the Computed Value.

Where in Viet Nam's legislation is the requirement set forth in Article 6(2) of the Agreement that "[n]o member may require or compel any person not resident in its own territory to produce for examination or to allow access to, any account or other record for the purposes of determining a computed value"?

Answer:

The content of the question has not yet been prescribed in Viet Nam's laws.

Question 118

Decree "On Customs Valuation of Import and Export Goods" (No. 155/2005/ND-CP), Chapter II – Methods of Determining Customs Values for duty Assessment of Imported Goods.

CHAPTER IV – Appeal and Offence Treatment, Article 17 – Appeal and Appeal Settlement: This Article provides that a party may appeal a customs decision in accordance with the "Law on Appealing."

Is this reference to the draft Ordinance on Procedures for Settlement of Administrative Cases, or some other legal document?

Answer:

Article 17 of the Decree No. 155/2005/ND-CP stipulates "In case the declarant does not agree with a customs decision of value for duty assessment, he shall comply with that decision, but simultaneously have the right to appeal according to the legislation on appealing".

According to Article 1 of the Law on Complaint and Denunciation, citizens, agencies and organizations have the right to appeal administrative decisions and actions by State administrative agencies and authorized persons working for the State administrative agencies when they have evidence to believe that the decision and action is contrary to the law, violating to the right and legal benefit of the person impacted by the administrative decision and administrative action has the right:

- To appeal against the decision if the impacted person does not agree to the administrative decision or administrative action;
- To raise the legal proceedings to the administrative court after the first appeal settlement of the customs authorities or after lodging the first appeal 30 days if impacted person has not received the reply from the issuing authorities of that administrative decision or administrative action.
- To raise the legal proceedings to the administrative court after the second appeal settlement by administrative authorities if the impacted person does not agree to that appeal settlement.

The procedure to publicize the customs rulings is as follows: Importing organizations and individuals are informed in writing about the customs rulings related to their interests and responsibilities in the importation process. (Articles 38 and 45 of the Law on Complaint and Denunciation).

Therefore, Article 17 of Decree 155 refers to the legal system on complaint and denunciation, not the Ordinance on Procedures for Settlement of Administrative Cases.

Question 119

Laws, regulations, judicial decisions and administrative rulings of general application giving effect to the Agreement shall be published. See Article 12 of the Agreement.

Where is this in Viet Nam's legislation?

Answer:

Article 10 of the Law on Promulgation of the Legal Normative Documents of Viet Nam specifies that the legal documents should be published in the Official Gazette.

Question 120

Article 14 of the Agreement provides that "the notes at Annex I to this Agreement form an integral part of this Agreement and the Articles of this Agreement are to be read and applied in conjunction with their respective notes."

Where are the interpretive notes in Viet Nam's legislation?

Answer:

Provisions of Article 14 of the Customs Valuation Agreement: Such as notes, explanatory notes in Annex I have been stipulated in the Degree No. 155/2005/ND-CP dated 15 December 2005 concerning to the customs valuation assessment on imported or exported goods and the Circular No. 113/2005/TT-BTC guiding the implementation of import or export duties.

Question 121

Referring to paragraph 210 (WT/ACC/SPEC/VNM/5/Rev.2), please provide the Working Party as soon as possible with English language translations of the text of Circular No. 87/2004/TT-BTC of 31 August 2004 and Circular No. 118/2003/TT-BTC. Review of these documents is essential to establish Viet Nam's full implementation of the Customs Valuation Agreement.

Answer:

We would like to confirm that Circular No. 113/2004/TT-BTC of 15 December 2005 has replaced Circular No. 87/2004/TT-BTC of 31 August 2004 and Circular No. 118/2003/TT-BTC dated 8 December 2003. The unofficial English translation of the following documents is available through WT/ACC/VNM/44/Add.1:

- Circular No. 87/2004/TT-BTC of 31 August 2004;
- Circular No. 118/2003/TT-BTC of 6 June 2002; and
- Circular No. 113/2004/TT-BTC of 15 December 2005.

Question 122

Paragraph 212 (WT/ACC/SPEC/VNM/5/Rev.2) noted that Customs Valuation Agreement transparency obligations were incorporated into Viet Nam's the proposed amendments to the law via Decree No. 60/2002/ND-CP of 6 June 2002. However, paragraph 210 advised that this decree had been superseded by Decree No. 155/2005/ND-CP issued in December 2005. Please describe the transparency provisions found in Decree No. 155/2005/ND-CP. Specifically, for review:

- 1. Do Viet Nam's new customs rules require making available to importers written advice on valuation and classification rulings? If so, how is this information communicated? If not, when will Viet Nam implement such procedures?**
- 2. Does Viet Nam make public customs ruling provided to an individual importer? If so, how is this done? If not, when will Viet Nam implement such procedures?**

3. **Are general customs rulings available to the public? If so, how? If not, when will customs implement a system to accomplish this?**
4. **To what extent does Customs consult with importers prior to implementing significant changes to the system? What process does Customs use to obtain importer views?**
5. **Has Customs established a post entry audit regime with transparent rules?**

Answer:

Transparency obligations in the Customs Valuation Agreement were stipulated in the Decree No. 155/2005/ND-CP dated December 2005 as follows:

- Item d), paragraph 2, Article 7;
 - Paragraph 2 Article 15;
 - Paragraph 3 Article 15.
 - Paragraph 3 Article 1 of this Decree regulates that in case the provisions of the international agreements of which Viet Nam is the Contracting Party are in conflict with this Decree, the provisions of the international agreements shall be complied.
1. Regarding classification, according to provision in Item IV, Section B of Circular No. 85/2003/TT-BTC of 29 August 2003 guiding classification upon the import and export nomenclature, importers are informed in written forms of classification decision made by the Customs authority.

Regarding valuation, Decree No. 155/2005/ND-CP of 15 December 2005 by the Government provides for the rights and responsibilities of the customs, including informing declarant in written form on method of valuation and the customs shall be responsible for guiding declarant about valuation.
 2. Viet Nam makes public customs rulings to importer, regardless of individuals or organizations as follows:
 - Importing organizations and individuals are informed in writing about the customs rulings related to their interests and responsibilities in the importation process. (Articles 38 and 45 of the Law on Appealing); and
 - Organizations and individuals have the right to appeal a customs rulings.
 3. Provisions on customs procedures and customs rulings of general application are available in Customs Newspaper, other newspapers and customs website.
 4. The Customs have always consulted with relevant ministries and agencies, including the Viet Nam Chamber of Commerce and Industry whenever it changed the customs procedures and general customs rulings. The Viet Nam Chamber of Commerce and Industry will collect comments from business community and send the results to the Customs. Enterprises' concerns are also heard through annual meeting between enterprises and the Prime Minister and the customs-business dialogues.
 5. Viet Nam's Customs have recently established a PCA system with transparent regulations. Accordingly, Article 32 of the Revised Customs law No. 42/2005/QH11 dated 14 June 2005, has been revised in line with the international standards as follows:
 - Post clearance audit is the Customs procedures in order to:

- (a) Re-examine the accuracy, reliability of the documents declared and submitted to the customs department by the owners, authorized persons, organizations, individuals whose import and export goods already cleared; and
 - (b) Re-examine compliance with the PCA process of export and import goods.
- PCA is implemented in cases of:
- (a) There is a sign of tax and trade fraud, violence of regulations on import and export activities management; and
 - (b) In consideration of import and export goods that do not belong to point (a), Item 2, the post clearance audit implementation will be based on collected information from data base, customs searchers, domestic and foreign organizations and individuals, other customs administrations.

Question 123

Paragraph 214 is a good basis for a commitment text. We will provide additional specific comments.

Answer:

We are looking forward to the comments.

Question 124

Paragraph 209 of WT/ACC/SPEC/VNM/Rev.2: We would like to bring to Viet Nam's attention the fact that according to our information, Viet Nam's customs authorities are still using minimum import prices in customs valuation, in particular as regards wines and spirits. We would urge Viet Nam to ensure that not only the provisions on customs valuation, but also the practical implementation of them will be carried out in compliance with the WTO Customs Valuation Agreement.

Answer:

Viet Nam confirms that Customs Valuation determination based on Minimum Price List was abolished according to Circular No. 87/2004/TT-BTC of Ministry of Finance dated 31 August 2004.

Regarding the case mentioned in the question, Viet Nam is willing to discuss, investigate and find the appropriate solution if more detailed information is provided.

Question 125

Could Viet Nam please state whether it has undertaken the reforms necessary for compliance with Article 11.2 of the Agreement on Implementation of Article VII of the General Agreement on Tariffs and Trade 1994 (Agreement on Customs Valuation), obliging the Members to ensure that their legislation provides for the right of appeal to a judicial authority?

Answer:

In compliance with Article 11 of the Customs Valuation Agreement, the contents of complaint and appeal have been stipulated in the Law on Complaint and Denunciation (last amended in 2005) and the Ordinance on the Procedures for the Settlement of the Administrative Cases (last amended in 2006).

- **Rules of origin**

Question 126

We understand that Viet Nam is in the process of drafting a decree to establish its rules of origin regime for customs purposes. What is the timetable for promulgation and implementation of this decree? If possible, we would appreciate reviewing the decree in draft and providing comments.

Answer:

An unofficial English translation of the Government's Decree No. 19/2006/ND-CP providing detailed provisions for implementation of the Commercial Law with respect to origin of goods was issued on 20 February 2006 and is available through document WT/ACC/VNM/44/Add.1.

Question 127

Please provide the Working Party with an English translation of the draft decree mentioned in paragraph 219 of WT/ACC/SPEC/VNM/5/Rev.2.

Answer:

An unofficial English translation of the Government's Decree No. 19/2006/ND-CP providing detailed provisions for implementation of the Commercial Law with respect to origin of goods was issued on 20 February 2006 and is available through document WT/ACC/VNM/44/Add.1.

Question 128

Paragraph 220 of WT/ACC/SPEC/VNM/5/Rev.2 is a good basis for a commitment text. We will provide additional specific comments.

Answer:

We are looking forward to receiving these comments.

- **Other customs formalities**

Question 129

We welcome the announcement in paragraph 222 of WT/SPEC/VNM/5/Rev.2 that Viet Nam has implemented electronic customs declaration and clearance procedures. For further clarification:

- **Does this new system allow Electronic Data Interchange (EDI) transfer of data between overseas suppliers and the Customs service?**
- **Does this new system enable EDI transfer of entry data between customs brokers and the Customs service?**

Answer:

Viet Nam has implemented the pilot system of electronic customs declaration and clearance procedures in several big cities. This pilot system has not yet allowed Electronic Data Interchange (EDI) transfer of data between overseas suppliers and the Customs service. However, the system has initially enabled EDI transfer of entry data between customs brokers and the Customs service for the

purposes of customs declaration; customs regulations (e.g. tariff nomenclature, commodities policy, customs legal documents, etc.).

- **Pre-shipment Inspection**

Question 130

We support the commitment in paragraph 226 of WT/ACC/SPEC/VNM/5/Rev.2.

Answer:

We would like to thank for the comment.

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

Question 131

We have reviewed the texts of Viet Nam's new legislation and we will be submitting a few questions on them.

Answer:

We take note of the comment.

Question 132

We support the commitment in paragraph 229.

Answer:

We take note of the comment.

Question 133

In addition, we note that Viet Nam continues its process of transition towards a market economy. Under these circumstances, special difficulties could exist in determining cost and price comparability in the context of anti-dumping investigations and countervailing duty investigations. 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.

We would like to propose the following text to address this situation. It should follow paragraph 230 in WT/ACC/SPEC/VNM/5/Rev.2.

Price Comparability in Determining Subsidies and Dumping

Article VI of the GATT 1994, the Agreement on Implementation of Article VI of the General Agreement on Tariffs and Trade 1994 ("Anti-Dumping Agreement") and the SCM Agreement shall apply in proceedings involving exports from Viet Nam into a WTO Member consistent with the following:

- (a) In determining price comparability under Article VI of the GATT 1994 and the Anti-Dumping Agreement, the importing WTO Member shall use either Vietnamese prices or costs for the industry under investigation or a methodology that is not based on a**

strict comparison with domestic prices or costs in Viet Nam based on the following rules:

- (i) If the producers under investigation can clearly show that market economy conditions prevail in the industry producing the like product with regard to the manufacture, production and sale of that product, the importing WTO Member shall use Vietnamese prices or costs for the industry under investigation in determining price comparability;
 - (ii) The importing WTO Member may use a methodology that is not based on a strict comparison with domestic prices or costs in Viet Nam if the producers under investigation cannot clearly show that market economy conditions prevail in the industry producing the like product with regard to manufacture, production and sale of that product.
- (b) In proceedings under Parts II, III and V of the SCM Agreement, when addressing subsidies, the relevant provisions of the SCM Agreement shall apply; however, if there are special difficulties in that application, the importing WTO Member may then use alternative methodologies for identifying and measuring the subsidy benefit which take into account the possibility that prevailing terms and conditions in Viet Nam may not be available as appropriate benchmarks.
- (c) The importing WTO Member shall notify methodologies used in accordance with subparagraph (a) to the Committee on Anti-Dumping Practices and shall notify methodologies used in accordance with subparagraph (b) to the Committee on Subsidies and Countervailing Measures.

Once Viet Nam has established, under the national law of the importing WTO Member, that it is a market economy, the provisions of subparagraph (a) shall be terminated provided that the importing Member's national law contains market economy criteria as of the date of accession. In any event, the provisions of subparagraph (a)(ii) shall expire 15 years after the date of accession. In addition, should Viet Nam establish, pursuant to the national law of the importing WTO Member, that market economy conditions prevail in a particular industry or sector, the non-market economy provisions of subparagraph (a) shall no longer apply to that industry or sector.

Answer:

We take note of the comment.

B. EXPORT REGULATION

Question 134

With reference to paragraph 242 (WT/ACC/SPEC/VNM/5/Rev.2), we request that Viet Nam incorporate into the report an explanation of the provisions of Article 5.4 of the Law on Changing and Amending Several Clauses of Mineral Law (Law No. 46/2005/QH11) which states that "the State is to limit the export of minerals in form of raw materials and concentrates". We also request Viet Nam provide an explanation of the WTO consistency of this measure, and request information on all minerals affected by this Article, and the process by which Viet Nam determines such limitations.

Answer:

In implementing the Mineral Law, minerals meeting the quality requirements and criteria and the conditions stipulated in Circular No. 04 dated 2 August 2005 of the Ministry of Industry in the period 2005 – 2010 will be allowed for export.

These criteria and conditions are aimed to prevent the illegal exploitation of minerals, normally for exports.

Question 135

Paragraph 232 (WT/ACC/SPEC/VNM/5/Rev.2) – 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 considerably reduces the current duties imposed on ferrous and non-ferrous scrap upon accession.

We agree with the commitment language proposed for paragraph 234 and would like to see the brackets removed from it.

Answer:

Viet Nam is willing to discuss with interested Members of the Working Party on this issue.

The proposed language in paragraph 234 is not consistent with the proposals of some Members in the Working Party. In addition, this proposed language is beyond WTO requirements.

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

Question 136

As stated at the meeting of the Working Party on 27 March of this year, paragraph 234 (WT/ACC/SPEC/VNM/5/Rev.2) is unacceptable. Should it prove necessary to include a paragraph on this issue, the Member will only support paragraph 235.

Answer:

We thank for the comment.

Question 137

We do not seek the elimination of all of Viet Nam's export duties. We have requested elimination of only some of these measures.

Answer:

Viet Nam is willing to discuss with interested Members of the Working Party on this issue.

The proposed language in paragraph 234 is not consistent with the proposals of some Members in the Working Party. In addition, this proposed language is beyond WTO requirements.

Question 138

Concerning the commitment language in paragraph 234 (WT/ACC/SPEC/VNM/5/Rev.2), we believe that this paragraph requires revision and we need to determine how to reflect Viet Nam's commitments in regard to export duties.

Answer:

Viet Nam is willing to discuss with interested Members of the Working Party on this issue.

The proposed language in paragraph 234 is not consistent with the proposals of some Members in the Working Party. In addition, this proposed language is beyond WTO requirements.

- **Export restrictions**

Question 139

We support the commitment in paragraph 243 of WT/ACC/SPEC/VNM/5/Rev.2.

Answer:

We would like to thank for the comment.

- **Export subsidies**

Question 140

Question: for those subsidies eliminated upon accession, does Viet Nam envisage any other measure in replacement of these subsidies?

Answer:

After accession, Viet Nam will continue to provide certain subsidies, but only in a manner consistent with its WTO obligations.

C. INTERNAL POLICIES AFFECTING FOREIGN TRADE IN GOODS

- **Industrial policy, including subsidies**

Question 141

We thank Viet Nam for submitting the subsidy notification concerning period 2003-2004. We have the following comments to make:

1. **Subsidy notification in regard to programmes IV. Investment Incentives contingent upon export performance for domestic business and VI. Investment Incentives contingent upon export performance for foreign-owned enterprises Viet Nam explains that Viet Nam will apply a transitional phasing out period of five years.**

This can also not be considered acceptable. The export requirement should be phased out upon accession as provided in the programmes VIII and IX.

2. **In regard to programme XV support for shipbuilding can Viet Nam please explain whether the incentives provided are only for exported vessels or also for vessels**

registered domestically and provide data on how many of the financed vessels in 2003 and 2004 were exported and how many registered domestically?

3. Regarding programme XVII - assistance to enterprises facing difficulties due to objective reasons - can Viet Nam please explain what is meant by "fees for using State budget capital"? Does this also concern reimbursements of loans provided by the State or State-owned banks?
4. As regards prohibited subsidies in general, we note that the 2005 Investment Law, Article 32, stipulates that investments in export processing zones shall be entitled to the incentives under the law. Because of this classification, all incentives listed under Section 2 "Investment Incentives" are also granted for export activities, and considered as prohibited export subsidies under Article 3 of the WTO Agreement of Subsidies and Countervailing Measures (subsidies contingent on export performance).

We welcome the commitment of Viet Nam to stop granting any new export subsidies upon accession, and would be happy if Viet Nam could explain its view on how Article 32 of the Investment Law can be considered compatible with this commitment to stop granting export subsidies?

Answer:

1. Viet Nam would like the Members of the WP to accept its commitments on subsidies as these commitments have been exceeding the level of obligations for WTO Members with the same development level as Viet Nam.
2. Support for shipbuilding as mentioned in Program XV is provided regardless of whether the vessels are exported or not. The data are as follows:

	Year 2003	Year 2004
Exported vessels	04	0
Domestically registered vessels	12	21

Unit: vessel

3. The provisions on fees for using State budget have been repealed (this fee is similar to a tax on capital used by State-owned enterprises for the capital that was contributed by the State).
4. Article 32 of the Investment Law stipulate investment incentives for projects investing in export processing zones. In the Implementing Decree of the Law, these investment incentives will be stipulated consistent with Viet Nam's commitments on subsidies (i.e. incentives will not be contingent upon export performance or local contents). Specifically, enterprises in export processing zones shall not be required to export their products and shall only be entitled to incentives in the forms of, *inter alia*, facilitation of procedures with respect to investment and rental of land and premises; facilitation in the supply and training of labour, supply of water, power and other utilities.

Question 142

We appreciate the hard work Viet Nam put into WT/ACC/VNM/42, its updated subsidies notification. It has helped clarify a number of important issues directly relevant to the shaping of an appropriate commitment.

This information, and the major changes that will occur with the implementation of the new Laws on Commerce, Enterprise, and Investment, will make it necessary to revise this text

substantially. Additional information is necessary, however, on Viet Nam's subsidy practices, including information on which sectors and firms benefit from particular subsidy programs and data on the value of the subsidies remaining.

Answer:

We agree that the section on Industrial Policy including subsidies of the Draft Working Party Report should be updated and revised substantially and shall work with the Working Party Members and the Secretariat to reflect fully new information, legislative changes and improvements in commitment language. At the same time, in order to facilitate this process, Viet Nam is also revising its subsidies notification and will submit it to the Working Party in the near future.

Question 143

With respect to paragraph 257 of WT/ACC/SPEC/VNM/5/Rev.2 and the response to Question 222 of WT/ACC/VNM/41, which was not incorporated into the draft Working Party Report, we note that machinery and equipment do not qualify as inputs for duty drawback as stated in Annex II of the Agreement on Subsidies and Countervailing Measures (ASCM). Annex II states that " ... drawback schemes can allow for the remission ... of import charges levied on inputs that are consumed in the production of the exported product ..." Machinery and equipment are not consumed in the production process. What steps does Viet Nam intend to take to bring its duty drawback scheme into conformity with the ASCM?

Answer:

We apologize for the mistake in explanation of Question No. 222 for mentioning drawback in the 2nd paragraph of the answer. We would like to confirm that drawback is not applicable to imported machinery equipments but only applicable to imported inputs for producing exports. The provisions on tariff exemption for machinery and equipment imported for fixed asset purposes by FDI enterprises are an incentive to attract and encourage FDI, not related to exports. This is not customs duty drawback for imported inputs for producing exports and does not fall into the prohibited subsidy category under the SCM.

Question 144

We would appreciate the insertion into the next revision of the draft Working Party Report a paragraph reflecting Question and Answer 222 from WT/ACC/VNM/41 and the response to the previous question.

Answer:

We apologize for the mistake in explanation of Question No. 222 for mentioning drawback in the 2nd paragraph of the answer. We would like to confirm that drawback is not applicable to imported machinery equipments but only applicable to imported inputs for producing exports. The provisions on tariff exemption for machinery and equipment imported for fixed asset purposes by FDI enterprises are an incentive to attract and encourage FDI, not related to exports. This is not customs duty drawback for imported inputs for producing exports and does not fall into the prohibited subsidy category under the SCM.

Question 145

We would like to propose the following sentence for inclusion in paragraph 258 of WT/ACC/SPEC/VNM/5/Rev.2.

258. Some Members noted that a number of programmes notified in Viet Nam's notification on industrial subsidies appeared to be contingent upon local content or export performance. In particular, the import duty reduction programme for products and parts of two-wheel motorbike and mechanical-electric and electronic industries, the export reward programme, and the support programme for investment projects in manufacturing engines of two-wheel motorbikes seemed to provide incentives contingent upon the use of domestic over imported goods. As for the investment incentive programme for domestic enterprises operating in Viet Nam, the investment incentives programme for foreign-owned enterprises, the programme on incentives in development investment loan, the support programme for the development of the textiles and clothing industry, the export promotion programme, the trade promotion support programme, the assistance programme to enterprises facing difficulties due to objective reasons, and the investment incentives programme for science and technology projects, these programmes seemed to be contingent upon export performance (see document WT/ACC/Viet Nam/13/Add.2). Aspects of the Price Stabilization Fund which had been maintained in the Export Promotion Fund, i.e. surcharges assessed based on difference between national and world market prices, appeared to be a price band. The use of these funds for export promotion could be an export subsidy. A Member noted that for purposes of applying Articles 1.2 and 2 of the SCM Agreement, subsidies provided to State-owned and state-controlled enterprises (SOEs) will be viewed as specific if, inter alia, SOEs are the predominant recipients of such subsidies or SOEs receive disproportionately large amounts of such subsidies. These Members asked Viet Nam to revise these programmes and amend its legislation prior to accession to remove all prohibited elements and ensure that investors would only be entitled to previously enjoyed incentives that were WTO-consistent. Members noted, in this respect, that Viet Nam's draft Investment Law continued to incorporate export-contingent subsidies. Viet Nam was urged to revise the draft and ensure that the new Law would conform fully to WTO rules. A Member sought a commitment from Viet Nam that, from the date of accession, Viet Nam would refrain from issuing any new investment licenses providing for prohibited subsidies. In addition, noting that Viet Nam administered two separate investment incentive schemes for export-oriented foreign-invested and domestic enterprises, a Member observed that a unification of the schemes would be - economically, financially, and from a transparency point of view - preferable, and enquired about Viet Nam's plans to reform its system.

Answer:

We would not accept this language as many measures mentioned here are not export subsidies with the meaning of the SCM.

In addition, the interpretation of Articles 1.2 and 2 of the SCM is falling outside the scope of this Working Party and should be referred to other bodies of the WTO.

Question 146

We note that paragraph 260 of the draft Working Party Report contains proposed commitment language that is not in brackets. We request that the Secretariat replace the brackets; we do not have enough information to agree to this language.

Answer:

We take note of the comment.

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

Question 147

We note that the Working Party draft will need to be updated in the light of developments in Viet Nam (e.g. passage of the framework Law on Standardization (e.g. paragraph 263) and revisions to the list of goods subject to mandatory inspection (paragraph 270)).

Answer:

The draft Law on Standardization (now the name has been changed into "Law on Standards and Technical Regulations") was submitted to the National Assembly for consideration and approval at the May Session this year (2006).

The Decision No. 50/2006/QD-TTg of 10 March 2006 by the Prime Minister, issuing the List of products, goods subject to quality inspection. This Decision replaced the Decision No. 117/2000/QD-BKHCHNMT of 26 January 2000 by the Minister of Science Technology and Environment.

An unofficial English translation of the Decision is available for reference through WT/ACC/VNM/44/Add.1.

Question 148

We would point out particular difficulties reconciling the information in paragraph 270 and Table 13. Paragraph 270 indicates the most recent list of goods subject to mandatory quality inspection was published 26 January 2000, pursuant to Decision No. 117/2000/ QD-BKHCHNMT, but this list was subject to revision. This is difficult to reconcile with the next statement which identifies Table 13 as containing the current quality inspection and mandatory safety certification "line management" measures. The Decision referenced in Table 13 is Decision No. 46/2001/QD-TTg of 4 April 2001. It is not clear what the purpose and rationale is for the "line management measures" (mandatory inspection/certification) contained in Table 13. And, we understand the information in Table 13 has been superseded by Decision No. 41/2005.

Answer:

Decision No. 50/2006/QD-TTg of 10 March 2006 by the Prime Minister issuing the List of products, goods subject to quality inspection. This Decision replaced the Decision No. 117/2000/QD-BKHCHNMT of 26 January 2000 by the Minister of Science Technology and Environment. Therefore, the correct reference in paragraph 270 is to Decision No. 50/2006/QD-TTg.

Line management measures mentioned in Table 13 of the Report were based on the Decision No. 46/2001/QD-TTg of the prime Minister dated 4 April 2001 and the implementing legal documents as issued by the line agencies. Decision No. 46/2001/QD-TTg was repealed by Decree No. 12/2006/ND-CP of the Government dated 23 January 2006 as from 1 May 2006. We will update the information when all line agencies have issued their implementing documents for Decree No. 12/2006/ND-CP. Table 13 only covers line management, not all TBT measures. Therefore, we propose to delete the sentence "Current quality inspection and mandatory safety certification line management measures applied in Viet Nam are listed in Table 13." in the 6th line from the top of paragraph 270.

Question 149

Where could reference to the following articles of the TBT Agreement (neither in the Ordinance, nor in the Working Party Report) be found in the legislation?

TBT Art. 2.3, TBT Art. 2.7, TBT Art. 2.8, TBT Art. 5.1.1, TBT Art. 5.2.2, 5.2.3, 5.2.4, 5.2.5, 5.2.6, 5.2.7

Answer:

The basic principles of the TBT Agreement's Articles mentioned in this Question have been referred in the different articles, especially Articles 5, 6 of the draft Law on Standards and Technical Regulations, which is expected to be passed by Viet Nam's National Assembly in this year. The draft Law is available through document WT/ACC/VNM/44/Add.1.

Question 150

Could Viet Nam submit to the Working Party a copy of Law No.26-2004-QH11 on Amendments of and Additions to Law on Complaints and Denunciations?

Answer:

Viet Nam has provided the unofficial English translation of the Law "On Amendment of and Addition to Some Articles of the Law on Complaint and Denouncement prior to the 12th meeting of the Working Party on Viet Nam's accession to the WTO".

Question 151

Question on the Working Party Report, Paragraph 261: What is the composition of STAMEQ?

Answer:

Directorate for Standards and Quality (STAMEQ) consists of organizations functioning in such main areas as standardization, metrology, quality management, conformity assessments and productivity. For more information, please visit the website of STAMEQ at www.tcvn.gov.vn and find STAMEQ/organization structure.

Question 152

Paragraph 262 of WT/ACC/SPEC/VNM/5/Rev.2: Could you give an update on the establishment of the National Accreditation Council? On which legal basis will it operate, what rules will it apply? Could we see a draft text?

Answer:

To date, this Council has not been established. The delay was caused by the development of Law on Standardization (now the Law on Standards and Technical Regulations). The establishment would be undertaken after the promulgation of Law on Standards and Technical Regulations.

Question 153

Paragraph 265 of WT/ACC/SPEC/VNM/5/Rev.2: Could you give examples of sectors that have geographical, cultural and custom specificities?

Answer:

The examples may be as follows:

- Electrical and electronic appliances: Based on IEC Standards, one can choose the climate tests dependently on geographical condition of the country (for example, if the country is located in tropical zone, humidity test and hot-humidity test may be chosen).
- Foods and food products, garments, toys may be dependent on cultural, custom specificities.

Question 154

Paragraph 267 of WT/ACC/SPEC/VNM/5/Rev.2: Are stakeholders also part of the drafting committees?

Answer:

The representatives of stakeholders may participate in the process of drafting technical regulations in two ways: part of drafting committees or giving comments on proposed technical regulations when they appeared in the media for this purpose. These procedures are also contained in the draft Law on Standards and Technical Regulations.

Question 155

Paragraph 270 of WT/ACC/SPEC/VNM/5/Rev.2: We would be interesting to get more information on the "proven track record of quality"

Answer:

"Proven track record of quality" mentioned in this paragraph means that for the lots of the same goods and after some times of importation, the results of testing/certification shows their conformity with the relevant standard(s) and/or technical regulation(s) on a stable basis. This good may be considered to be loosen quality inspection regime for the next imported lots.

Question 156

Paragraph 271 of WT/ACC/SPEC/VNM/5/Rev.2: Could you explain the delay between arrival at port and customs clearance?

Answer:

The delay between arrival at port and customs clearance, inter alias, may be caused by quality testing/certification (as usual these times were specified in the procedures set by Quality Inspection Bodies). The importers always request their goods passed customs clearance as fast as possible. So in order to meet this request of importers and the State quality control over the quality of certain goods (under the Control List) before their usage, quality inspection at post-customs clearance method is applied. Under this method, imports arriving at the port after the compliance with other regulations (such as tax payment...) may have customs clearance without waiting for quality test report/certificate. Quality inspection may be carried out after customs clearance at places other than port of entry (such as the inside the warehouse or even in the store of the importer). This facilitates clearance of goods at port of entry and the importers do not need to pay the fee for detention at port of entry while awaiting quality test report/certificate.

Question 157

Question on the Ordinance on Standardization, Article 3: unclear definitions concerning standardization, includes also technical regulations, Conformity assessment?

Answer:

One objective of this Law is to present as much as possible the main principles of the TBT Agreement as well as of ISO recommendations, guidance, especially in aspect of the transparency obligations and involvement of all impacted parties in processes of standards and technical regulations development for the purpose to make these documents effective and efficient.

Question 158

Questions on the Ordinance on Standardization:

- **Article 4.2: Could that be elaborated further? To whom is this applied, under which circumstances etc;**
- **Article 4.4: Reference to regional standards (what is their definition, also Article 11);**
- **Article 4.5: Could the word adequately be explained?**
- **Article 5.3: Stronger commitment would be appreciated**
- **Article 7.2, 7.3 and 7.4: how is the work between the Ministries Coordinated?**
- **Article 11: Could you define regional standards? (Article 4.4)**
- **Article 17: What is the relation between organization standards and national standards? What about the participation in the standardization process of organization standards and the possibility to comment, and their subsequent publication?**
- **Article 17.3: This Article should state at least that these standards should be based on international standards;**
- **Article 20.1: Could you provide with a definition of foreign standards, when would they be applicable?**
- **Article 26: Could you explain why words are in brackets?**
- **Article 27: International standards should come first and not at the same level as the others;**
- **Article 28.3: "Urgent problems" wordings are too broad, use for example wordings as in Article 29.2;**
- **Article 31: What is the delay foreseen between the approval of the technical regulation and its publication? Could there be a wording that this should be done promptly? (Article 2.11);**
- **Article 40.3: Could you explain the functioning of the Registry? What about the requirements for foreign enterprises?**
- **Article 41.1: Could we get a list of these products?**

Answer:

Please refer to the new draft of Law on Standards and Technical Regulations (WT/ACC/VNM/44/Add.1).

- **Sanitary and phytosanitary measures**

Question 159

We welcome the progress Viet Nam is making towards implementing the SPS Agreement.

In particular, we appreciate Viet Nam's assurance in paragraph 294 of the draft Working Party Report that the new SPS enquiry point "would provide for a suitable timeframe for public comment on all draft SPS standards and regulations of no less than 60 days, ..."

Answer:

As mentioned at Decision No. 117/QD-BNN-TCCB dated 18 April 2006 of Minister of Agriculture and Rural Development issuing Regulation on organization and operational ordination of Viet Nam SPS National Office: "Viet Nam SPS National Office will inform all draft SPS standards and regulations to WTO Secretary with suitable time of no less than 60 days for public comment".

Question 160

Concerning the labelling of GMOs, we note that Viet Nam agreed to delete mention of this from paragraph 296 of document WT/ACC/SPEC/VNM/5/Rev.2. Would Viet Nam clarify whether this entails the repeal of Decision No. 212/2005/QD-TTt establishing regulations for the trade in and use of GMOs? Whatever the case, Viet Nam should also clarify whether products containing GMOs will be treated in an identical manner to products not containing GMOs. Does Viet Nam specifically undertake to comply with WTO rules and the DSB rulings on the treatment of GMOs?

Answer:

We agree to remove paragraph 196. As indicated, labelling in Viet Nam is regulated by Decision No. 178/1999/QD-TTg of 30 August 1999. Decision No. 178 is going to be repealed by a Government's Decree which will contain the labelling provisions in accordance with international practice and based on scientific evidence. Those provisions on labelling contained in Decision No. 212/2005/QD-TTg and other legal documents issued by the Government agencies that are inconsistent with this Decree would be ineffective.

Viet Nam has committed to implement the SPS Agreement, including rules that may be applicable to treatment of GMOs, from the date of accession.

Question 161

As to Decision No. 212/2005/QD-TTt by which Viet Nam established a regulatory framework for the trade, use and release into the environment of genetically modified organisms:

- (a) **What is the status of the implementation of the National Biosecurity Framework?**
- (b) **Could Viet Nam clarify whether its regulatory framework provides for differential treatment with regard to approval for GMOs to be released into the environment in Viet Nam, as opposed to GMOs brought into the country for food, feed and/or processing — taking into account, above all, that other Members are looking at the two situations with a view to ensuring a reliable supply without creating unnecessary barriers to trade?**
- (c) **Given that Viet Nam has historically imported a number of products from GMO-producing countries, we would like to know the scope of the new mandatory labelling requirements according to method of production. Could you please provide further information on the consistency of these requirements with the relevant WTO obligations?**

Answer:

Viet Nam has committed to implement the SPS Agreement, including rules that may be applicable to treatment of GMOs, from the date of accession.

As indicated, labelling in Viet Nam is regulated by Decision No. 178/1999/QD-TTg of 30 August 1999. Decision No. 178 is going to be repealed by a Government's Decree which will contain the labelling provisions in accordance with international practice and based on scientific evidence. Those provisions on labelling contained in Decision No. 212/2005/QD-TTg or any legal documents issued by the Government agencies that are inconsistent with this Decree would be ineffective.

Question 162

We note concerns with Viet Nam's restrictions on the entry of products to no more than two-thirds of their expiration date. Viet Nam has explained in paragraph 286 that this relates only to "raw materials and food additives". We request that Viet Nam provide more information in this paragraph (and by reference to a table) about the products covered by this limitation and their HS codes. Viet Nam also explains later in the paragraph that in relation to "pre-packaged food", it only required food labels to indicate either the manufacture date, expiration date or shelf-life. Hence, we seek clarification as to which products the "shelf-life" limitation mentioned at the top of the paragraph applies and whether Viet Nam will take steps to remove this unnecessary and trade-restrictive requirement in relation to these products.

Answer:

This measure only applies to raw materials and food additives that will later be used for producing food products. There is no list of specific commodities. The reason, as explained, is only to combat trade frauds.

Concerning regulations on labelling of pre-packaged food: in Paragraph 2, Article 11.a of Decision No. 178/1999/QD-TTg dated 30 August 1999 of the Prime Minister issuing Regulation of Labelling for locally produced, imported and exported products state that: "Some products such as food, cosmetics and pharmaceutical products shall be labelled with expiration date".

- Trade-related investment measures

Question 163

This section will require substantial updating and redrafting based on the new regime on incentives established by the new Investment Law.

Answer:

Viet Nam has updated the section on TRIMs to reflect new regulations in the Law on Investment.

Question 164

Paragraphs 302-305 list various programs. We will be looking for information on their elimination or alteration to comply with TRIMs obligations, so that the draft commitment in paragraph 308 can be considered accurate.

Answer:

Measures that have been and will be taken to fully comply with the obligations of the TRIMs Agreement include:

- Measures mentioned in paragraphs 305 and 307 of WT/ACC/SPEC/VNM/5/Rev.2;
- The Law on the Amendment of and Addition to some Articles of the Law on Foreign Investment 2000 removed the foreign exchange balancing requirement; and
- The Law on Investment and its Implementing Decrees have removed all measures indicated in the Illustrative List of the TRIMs Agreement, which were formerly conditions for granting investment licences or for receiving investment incentives.

Question 165

We note this section requires complete re-drafting to remove old material that is no longer valid. Viet Nam is requested to provide a full description of measures it has taken in recent legislation and any implementing regulations to remove prohibited TRIMs.

Answer:

Viet Nam has updated the section. Measures that have been and will be taken to fully comply with the obligations of the TRIMs Agreement include:

- Measures mentioned in paragraph 305 and 307 of WT/ACC/SPEC/VNM/5/Rev.2;
 - The Law on the Amendment of and Addition to some Articles of the Law on Foreign Investment 2000 removed the foreign exchange balancing requirement; and
 - The Law on Investment and its Implementing Decrees have removed all measures indicated in the Illustrative List of the TRIMs Agreement, which were formerly conditions for granting investment licences or for receiving investment incentives.
- **Free zones, special economic areas**

Question 166

We understand that the legislative basis for Viet Nam's SEZs will soon change, i.e. that the implementing Decree (regulations) to the new Investment Law will replace the legislative basis noted in paragraph 309.

We also note that the programs that provide the incentives in the SEZs are being eliminated or altered, as will be discussed in the Subsidies section of the report. So we expect broad changes to this section.

Answer:

Viet Nam shall update paragraph 309 and other paragraphs to reflect new regulations in Implementing Decree of the Law on Investment.

Question 167

We support the draft commitment language we proposed in paragraph 316 of WT/ACC/SPEC/VNM/5/Rev.2 and will work with Viet Nam and other Working Party members to craft agreed language.

Answer:

We take note of the comment.

Question 168

Paragraph 316 of WT/ACC/SPEC/VNM/5/Rev.2: 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:

Viet Nam would like the Members of the Working Party to accept its commitments on export subsidies as these commitments have been exceeding the level of obligations for WTO Members with the same development level as Viet Nam. The period referred to in the question has been reduced to five years.

- Government procurement

Question 169

We renew our invitation to Viet Nam to become an observer to the Committee on Government Procurement upon accession as a first step towards joining the Agreement on Government Procurement.

Answer:

We thank for the suggestion and will consider it after WTO accession.

- Trade in transit

Question 170

We note that this section needs to be updated to reflect changes in Viet Nam's new Commercial Law.

Answer:

The Commercial Law of 2005 sets forth provisions on trade in transit as follows:

Article 242: The right of transit of goods

1. All commodities owned by foreign organizations and individuals are permitted to transit in Viet Nam's territory and have to clear the customs procedures at the import and export border gates in accordance with the provision of the law, except:
 - a) Commodities which are arms and ammunition, explosive and other commodities of high danger, except cases permitted by the Prime Minister;
 - b) Commodities subject to business prohibition, import and export prohibition may only transit in Viet Nam territory under the permission of Minister of Trade.
2. Transit goods when export and transportation means for transit goods exiting Viet Nam territory shall be the imported goods and transportation means entering Viet Nam territory.

3. Foreign organization and individuals transit in Viet Nam's territory shall hire Vietnamese business persons doing transit business, except the case stipulated in Part 4 of this Article.
4. The transit of goods in Viet Nam's territory of foreign organizations and individuals by hiring foreign business persons shall be conducted in accordance with international treaties to which the Socialist Republic of Viet Nam is a signatory and shall abide by the provisions of Vietnamese law on exit, entry and transportation.

- **Agricultural policies**

Question 171

We note the dueling commitment language in paragraph 343 of the draft Working Party Report. We can support the second bracketed text as the basis for a commitment.

Answer:

Viet Nam can only accept the first bracketed text. It is noted that Viet Nam's commitment in this area has exceeded the level agreed upon by all WTO Members in the Doha Round.

- **Trade in civil aircraft**

Question 172

We renew our invitation to Viet Nam to become a Member of the Agreement on Trade in Civil Aircraft after accession.

Answer:

We thank for the suggestion and will consider it after WTO accession.

- **Textiles regime**

Question 173

We would like to see the further development of this section with reference to Viet Nam's subsidies and other supports for textile goods production and export.

From our perspective, it is information important for the completion of the factual portion of this section.

Answer:

We take note of the comment and would also like to take note of the fact that the WTO Agreement on Textiles and Clothing has expired.

- **Core labour standards**

Question 174

We again request that the brackets be removed on this section; it provides information that is important.

Answer:

We agree with the suggestion by several Members of the Working Party that this section be deleted. We have not seen a labour section in any Working Party Report and would like the Working Party to maintain what has been the practice.

V. TRADE-RELATED INTELLECTUAL PROPERTY REGIME

- General

Question 175

This section needs to be revised in light of the passage of the new Civil Code amendments (entry into force 1 January 2006) and the new Intellectual Property Law (entry into force 1 July 2006).

Answer:

At the time being, Viet Nam is updating the Draft Report in accordance with the Civil Code 2005 (entry into force as of 1 January 2006) and the Intellectual Property Law (entry into force as of 1 July 2006) in the following manner: those contents that have been changed by the new laws will be revised accordingly and those contents that remain unchanged by the new laws (i.e. the new laws retain the same what was in the previous system) will be affixed with corresponding provisions of the new laws. We believe that the update will not change the nature of the contents that are explained, examined and on-going updated during the last period.

Question 176

At this time it is not possible to complete a full and definitive analysis of TRIPS compliance in the area of enforcement, because many aspects of TRIPS procedural obligations are left to be fleshed out by various ordinances, implementing regulations, decrees, and circulars.

Answer:

In general, in terms of form, the Civil Code 2005, the Intellectual Property Law 2005 and the decrees and circulars guiding the implementation thereof which is to be promulgated this year will form a complete and uniform system of laws and regulations on intellectual property and substitute the prevailing one. However, in terms of contents, the new system substantially inherits the prevailing one basically. Besides, it also has certain additions and amendments, all targeted at compliance with provisions of the international agreements within the framework of WTO as well as with new situation of Viet Nam in the context of WTO accession.

Question 177

It would help speed the process, if Viet Nam could provide a schedule of how it plans to implement the new Intellectual Property law in the areas of civil, criminal, administrative, and border measures.

Answer:

According to the Resolution No. 45/2005/QH11 on the implementation of the Civil Code 2005, regulations guiding the implementation of the Civil Code 1995 remain in force until the Government promulgates substituting provisions.

The formulation and implementation of provisions on intellectual property in the Civil Code 2005 and the Intellectual Property Law have been carried out systematically under a plan.

In the program of formulation of regulations of the year 2006, the Government of Viet Nam has planned to promulgate the following Decrees by 1 July 2006 (the entry into force of the Intellectual Property Law for making detailed provisions and guidance to the implementation of the Intellectual Property Law).

- The Decree guiding the implementation of the provisions on copyrights and related rights of the Intellectual Property Law;
- The Decree guiding the implementation of the provisions on industrial property of the Intellectual Property Law;
- The Decree guiding the implementation of the provisions on plant varieties of the Intellectual Property Law;
- The Decree guiding the implementation of the provisions on the enforcement of intellectual property rights of the Intellectual Property Law (including detailed regulations on the State administration of intellectual property, the enforcement of intellectual property rights with civil remedies, administrative remedies, intellectual property rights control with regard to import and export and assessment on intellectual property).

The Drafts of the above decrees are scheduled to be published for comments of ministries, industries, concerned organizations and individuals in May 2006.

In addition, the Ministry of Culture and Information, the Ministry of Science and Technology and the Ministry of Agriculture and Rural Development have planned to promulgate circulars guiding the implementation of procedures of registration of copyrights and related rights, industrial property rights and rights in plant varieties, a circular guiding the implementation of provisions on industrial property representatives and a circular guiding the implementation of procedures of transfer of industrial property.

Question 178

It is unclear how the new laws will interact with pre-existing ordinances, decrees, rules, and regulations. Over the past five years, we have reviewed numerous ordinances, decrees, rules, and regulations.

- **Given that the Civil Code amendments and the new Intellectual Property Law provide for further implementing provisions, what is the status of the pre-existing ordinances, decrees, rules, and regulations?**
- **When will Viet Nam promulgate ordinances, decrees, rules, and regulations under the new laws?**

Answer:

The above-mentioned decrees and circulars when enter into force will substitute the existing ones which have the same scope of regulation. In general, in terms of form, the Civil Code 2005, the Intellectual Property Law 2005 and the decrees and circulars guiding the implementation thereof which is to be promulgated this year will form a complete and uniform system of laws and regulations on intellectual property and substitute the existing system. However, in terms of contents, the new system substantially inherits the existing system. Besides, it also has certain additions and amendments, all targeted at compliance with provisions of the international agreements within the framework of WTO as well as with the new situation of Viet Nam in the context of WTO accession.

Question 179

Throughout the drafting process of the amended Civil Code and the new Intellectual Property Law, we advocated that the Civil Code provisions on intellectual property be kept to a minimum so as not to conflict with the Intellectual Property Law. We now note that the amended Civil Code contains numerous intellectual property provisions that overlap with and are inconsistent with the Intellectual Property Law. We believe that there should not be overlapping and conflicting provisions in these two laws because any such conflict will create uncertainty about the laws' implementation.

Please explain how Viet Nam intends to remedy the inconsistencies between these two laws.

Answer:

The Civil Code, as a "master" law, regulates civil relations, including relations on intellectual property. Therefore, the Civil Code 2005 has retained certain provisions on intellectual property enough to form basic civil principals of intellectual property rights.

The Intellectual Property Law, as a uniform law regulating intellectual property relations, is not confined to civil aspects but also deals with administrative and penal aspects of intellectual property rights. The Intellectual Property Law complies with and details provisions on basic civil principals of intellectual property rights provided for in the Civil Code 2005. In addition, to ensure the completion of the Intellectual Property Law as a special law regulating intellectual property relations, there has been repeated certain provisions on intellectual property provided for in the Civil Code 2005 in it.

Therefore, even though there are some repeated provisions, the Intellectual Property Law has not conflicted with the Civil Code 2005 in term of contents. Moreover, Article 5 (2) of the Intellectual Property Law expressly specifies the principle on the application of laws as follows: "Where there is any difference between provisions on intellectual property rights of this Law and those of other laws, the former shall be applied". Thus, in Viet Nam's opinion, the implementation of these two laws will not meet any difficulty.

Question 180

Articles 7(2) and 7(3) of the Intellectual Property Law appear to give the State powers to interfere with a rightholder's exercise of its exclusive rights, including by compelling licensing. These particular articles do not include any of the limitations or procedural requirements set out in the TRIPS Agreement. Under TRIPS, some Intellectual Property Rights, e.g. trademarks, are not subject to compulsory licensing. Please clarify the meaning of these Articles and explain how they will be applied in a manner that complies with the obligations that Viet Nam will assume under the TRIPS Agreement.

Answer:

The Article 7 on limitations to Intellectual Property Rights, as whole in general and its Sections 7(2) and 7(3) in particular are introduced into the Intellectual Property Law for the sole purpose of striking the balance of interest between the individuals (i.e. the Intellectual Property Rights owners) and the public (the society) with a view to creating incentives for the creative research and business development towards the higher living standards of the society in terms of material and spiritual conditions.

Particularly, Article 7(2) expresses the principle that the Intellectual Property Protection does not affect either the Intellectual Property Rights owner's obligations with respect to the *legitimate* interest

of the other individuals and entities or his obligations under the other laws and regulations. That is an obvious principle having been recognized both in national laws and international law.

Article 7(3) represents the power of the State to interfere in the urgent circumstances for the purposes of national defence, security, people living and other interests of the society. That is a permitted exception under the TRIPS Agreement with regards to the exclusive rights of the Intellectual Property Rights owner. Furthermore, Article 7(3) stipulates clearly that the exercise of the State's authority shall be "subject to appropriate conditions", rather than "not include any of the limitations or procedural requirements as commented by a Working Party Member. For instance, when Article 7(3) is applied for such a particular intellectual property object as inventions, it is required to conform to the conditions and procedures set forth in Section 3 of Chapter X concerning compulsory licensing of inventions; and as for plant varieties to those set forth in articles from 195 to 197 of Chapter XV, as for a protected plant variety.

This also means that the application of Article 7(3) of the Intellectual Property Law 2005 would be very restricted, on the basis of case-by-case consideration.

The old Civil Code 1995 and the current Civil Code 2005, and the Intellectual Property Law do not provide for the compulsory licensing as to trademarks, therefore they are not inconsistent with the TRIPS Agreement.

- **Copyright and related rights**

Question 181

Article 8(1), when applied to copyright and related rights, would constitute an impermissible content-based restriction of rights.

- **Please confirm that this provision will not be used to strip copyright and related rights holders of their rights to works that Viet Nam deems "contrary to the social morality, public order or harmful to national defence and security."**

Answer:

We confirm this understanding.

Question 182

Article 17(4) appears to create an unacceptable hierarchy of the rights of authors over related rights. "Performances, phonograms and broadcasts and satellite signals carrying encrypted program shall only be protected as stipulated in paragraph 1, 2, 3 of this Article provided that they do not influence the copyrights exercise." The need for the authorization of the author does not cease to exist because the authorization of the performer or producer is also required, and vice versa. It may be that what is meant here is that performances, phonograms and broadcasts and satellite signals carrying encrypted program are protected without prejudice to the rights in any underlying copyright work.

- **Please clarify the intent of Article 17(4).**

Answer:

It means that performances, sound recordings, video recordings, broadcasts and satellite signals carrying encrypted program shall only be protected without prejudice to copyrights.

Question 183

The new "broadcasting" right defined in Article 4(11) is only provided to performers (Article 29(3)(c)) and broadcasters (Article 31(1)(a)). Under Article 20(1)(d), authors and other related rights owners are granted a lesser right "to communicate the work to the public by wire or wireless means, through electronic information network or by any other technical means."

- **Please explain the reason for these differences.**
- **Please explain how Viet Nam intends to implement the Berne and TRIPS requirement of a presumption of copyright ownership.**

Answer:

- "Broadcasting" means the transmission of sounds or of images or of sounds and images of works, performances, sound recordings, video recordings and broadcasts to the public by wire or wireless means, including through satellite, the public may access them from a place and at a time individually chosen by them.

"Communicating" the work to the public by wire or wireless means, through electronic information network or by any other technical means. There for "broadcasting" is one means of "communicating".

- Viet Nam has the obligations to implement the provisions of an international treaty to which Viet Nam is party.

In cases where an international treaty which the Socialist Republic of Viet Nam is party to contains provisions different from the Vietnamese Laws, the provisions of such international treaty shall be applied.

Question 184

Article 30 appears to provide sound recording producers with an exclusive right to "distribute to the public the original or copies of the phonogram by sale, rental or distribution or any other technical means accessible to the public." The Article goes on to say, however, that "[t]he producer of a phonogram shall have the right to get material benefits when his or her phonogram is distributed to the public. This latter provision appears to contradict the exclusive right provision by providing only a remuneration right.

Please explain what is intended by the second sentence of Article 30.

Answer:

There is no contradiction between paragraphs 1 and 2 of Article 30 because the right owner having material benefits when his/her exclusive rights are exploited.

Question 185

Please explain what is meant by the Article 23 provision that requires anyone making use of folk artistic and literary works to "protect their real values."

Answer:

The term of "protect their real values when using a work" means there is no amendment, cutting or distortion of the work and it must indicate the origin of the work.

Question 186

Please clarify that the provisions in Article 42 relating to State ownership of copyright related only to works created by Viet Nam's citizens.

Answer:

Article 42 shall be applied to circumstances when works created by Vietnamese citizens or when foreign persons or legal entities transfer their works to the Vietnamese State.

Question 187

Please explain how Viet Nam will protect pre-existing works as required by Berne Article 18, as incorporated by the TRIPS Agreement.

Answer:

Works protected in Viet Nam shall be in accordance with the provisions of Vietnamese Laws and the provisions under international treaties to which Viet Nam is a party.

In cases where there is any difference between the provisions of the Vietnamese laws and of an international treaty, to which the Socialist Republic of Viet Nam is a party to deal with a subject matter, the provisions of the international treaty shall be applied.

Question 188

Please confirm that Article 25(1)(d) will not allow libraries and archives to make and distribute unlimited copies of works in digital form.

Please confirm that the 25(1)(k) is limited to the importation of a single copy for personal use.

The exception in Article 25(1)(e) appears to conflict with the Berne and TRIPS three-step test, as it provides that it is permissible to put on stage "dramatic works and other forms of performing arts in cultural gatherings or in promotional campaigns." The terms "cultural gatherings" and "promotional campaigns" are capable of being interpreted so as to allow for commercial gain other than through sale of tickets.

Answer:

Article 25 (1.d) shall be provided in detail in the Decree of the Government guiding the implementation of a number of articles on copyright and related rights of the Intellectual Property Law.

Article 25 (1.k) shall be provided in detail in the Decree of the Government guiding the implementation of a number of articles on copyright and related rights of the Intellectual Property Law.

In that case this provision meets requirements of cultural performances to the public without commercial purposes.

Question 189

The exceptions provided for in Article 26 and 33 appear to be overbroad and in our view inconsistent with TRIPS. Broadcasters must be required to obtain authorization from right holders in order to provide for a meaningful broadcasting rights and a right to authorize communication to the public.

Answer:

The exceptions provided for in Article 26(1) shall be only applied with the conditions of no influence to normal exploitation of work, no prejudice to the rights of the authors or copyright owners; it must show information of names of authors as well as the origin and sources of works; it shall not be applied to works of motion pictures.

The exceptions provided for in Article 33(1) shall be only applied with the conditions of no influence to normal exploitation of the performance, phonograms, video tapes, broadcasting programs and no prejudice to the rights of the performers, phonogram and video-tape producers, and broadcasting organisations.

Broadcasting organisations in Viet Nam are authorities having functions of propaganda and education of laws, and operating by the State finance, therefore, these organisations shall pay royalties and remuneration only when they broadcast programs under other sponsors, advertisement or other manner of collecting fees.

Question 190

We would like to propose further modification to paragraph 386 of WT/ACC/SPEC/VNM/5/Rev.2:

- 386. [Some Members observed that it had been brought to their attention that some agencies of the Government of Viet Nam used computer software that had not been authorized by the right holder. The Members also noted that an agency of the Government of Viet Nam and a State-owned enterprise were providing unlicensed cable television programming to Vietnamese customers. They requested that such practices should be eliminated by Viet Nam in the context of its accession to the WTO and the implementation of the obligations in the WTO Agreement on TRIPS. The representative of Viet Nam confirmed that prior to the date of accession, Viet Nam would issue appropriate legal instruments mandating that all government agencies use only legitimate computer software and only as authorized by the right holder. Such measures shall actively regulate the acquisition and management of all software for use by government agencies. Such management may take the form of procedures, such as preparing and maintaining inventories of software present on agency computers, and inventories of existing software licenses. The representative of Viet Nam also confirmed that prior to the date of accession, Viet Nam would issue appropriate legal instruments mandating that all cable television purveyors provide only fully licensed products to their customers. The Working Party took note of these commitments.]**

Answer:

In implementing the Civil Code 2005 and the Intellectual Property Law 2005 and the international treaties that Viet Nam is a party, Viet Nam would issue appropriate legal instruments strengthening the use of legitimate computer software, in particular within Government agencies.

The provision of unlicensed cable television programming by one company has been stopped right away after the issue was brought to the Government's attention.

- **Patents and undisclosed information**

Question 191

Article 123 of the Intellectual Property law states that the owner of an industrial property right is permitted to use its industrial property object according to certain uses listed in Article 124. Article 123 further states that the industrial property holder is prohibited from using the industrial property object according to listed prohibitions in Article 125.

- (a) **Please explain how these provisions, or any other provisions of the Intellectual Property Law, comport with TRIPS Article 28(1), which confers to the patent owner the exclusive right to prevent third parties, without the patent owner's consent, from the acts of making, using, offering for sale, selling or importing a product.**
- (b) **Please state which provision in the Intellectual Property Law complies with TRIPS Article 28(2) and explain how it complies.**

Answer:

- (a) The rights conferred to the owner of an invention patent as required by Article 28(1) of the TRIPS Agreement are set out in articles 123.1.b, 124.1 and 125 of the Intellectual Property Law as follows:

Article 123.1.b reads:

"The Intellectual Property owner has the right to prevent others from using the respective industrial property subject matter in accordance with Article 125 of this Law".

Article 125 reads:

"1. The owner of an industrial property subject matter (...) has the right to prevent others from using the respective industrial property subject matter unless such use falls into the cases provided for in paragraph 2 [permitted exceptions to the exclusive rights of the owners of inventions, industrial designs, layout designs and trademarks] or paragraph 3 [permitted exceptions to the rights of the owners of business secrets] of this Article."

Therefore, according to articles 123.1.b and 125, except for the cases of the permitted exceptions, the owner of an invention has the right to prevent others from using his invention, while the concept "using an invention" is defined clearly in Article 124 as follows:

- "1. The use of an invention means the conduct of the following acts:
- a) Manufacturing the protected product;
 - b) Applying the protected process;
 - c) Exploiting the uses of the protected product or a product obtained by the protected process;
 - d) Circulating, or advertising, offering, stocking for circulating the product provided for in subparagraph c of this paragraph;
 - d') Importing such product as provided for in subparagraph c of this paragraph."

This means that:

- Where the patented invention is a product, the patent owner has the right to prevent third parties from performing any of the following acts: manufacturing, exploiting, circulating, advertising, offering, stocking for circulating and importing such product; and
- Where the patented invention is a process, the patent owner has the right to prevent third parties from performing any of the following acts: applying the patented process, exploiting the uses of the product obtained by the patented process, circulating, advertising, offering, stocking for circulating and importing the product obtained by the patented process.

The aforesaid provisions are fully consistent with the contents of Article 28(1) of the TRIPS Agreement. To this point, it is affirmable that the provisions set forth in Articles 123.1.b, 124.1 and 125 of the Intellectual Property Law satisfy the requirements under Article 28(1) of the TRIPS.

- The provisions of articles 123.1a and 123.1c of the Intellectual Property Law is in accordance with Article 28(2) of the TRIPS. Particularly, Article 123.1 reads:

- "1. The owner of an industrial property subject matter shall have the following property rights:
 - a. To (...) or permit others to use the industrial property subject matter in accordance with Article 124 and Chapter X of this Law;
 - b. (...);
 - c. To dispose off the industrial property subject matter in accordance with Chapter X of this Law;"

Reading into the context of the above-mentioned provision, the right to permit others to use the industrial property subject matter includes the right to conclude the licensing contracts; the right to dispose off the industrial property subject matter includes the right to assign it and the right to let it be inherited.

To this point, it is affirmable that the provisions of Articles 123.1a and 123.1c of the Intellectual Property Law satisfy Article 28(2) of the TRIPS.

Question 192

Regarding Article 146(d) of the Intellectual Property law, please explain what the "remuneration frame" provided for by the Government is. How does the Government determine the amount of remuneration in the "remuneration frame"?

Answer:

Regarding Article 146.1(d) of the Intellectual Property Law, "remuneration frame" is the ceiling level and principles to determine the remuneration within such frame. According to the intellectual property Law, the State authority will base on the remuneration frame to determine an adequate remuneration (Article 146.1(d)) and fix such remuneration as a condition of use of invention in the decision on compulsory licensing of invention.

The specific content of the remuneration frame will be provided for in the Decree stipulating in details and guiding the implementation of certain provisions on industrial property rights in the Intellectual Property Law (The Decree is expected to be promulgated by July 2006). In the light of the draft Decree, the remuneration shall be determined taking into account the economic value of right of use as transferred, on the basis of following elements:

- The contractual licensing price of the invention;

- Investment fund for creating the invention;
- Profits gained through using the invention;
- Remaining duration of validity of the patent; and
- The need of licensing the invention.

Question 193

Regarding the "Compulsory licensing inventions" section of the Intellectual Property Law (found in Section 3), please state which provision complies with Article 31(j) of the TRIPS Agreement and explain how it complies.

Answer:

In the legal system of Viet Nam, possibility of review of administrative decisions including any decision relating to compulsory licensing which provides for the remuneration for the use of invention under a compulsory licence by judicial or by a distinct higher authority is provided for in the Law on Claim and Denunciation and the Ordinance on the Settlement of Administrative Cases. Particularly, Article 147.2 of the Intellectual property Law stipulates that "A decision on compulsory licensing of inventions shall provide for appropriate scope and conditions of use in accordance with Article 146 of this Law", including condition "to pay the holder of exclusive right to use invention an adequate remuneration" (Article 146.1.d). Therefore, the decision on the payment of remuneration is a mandatory content of the decision on licensing. Moreover, Article 147.4 provides that "A decision on compulsory licensing and a decision on refusal of compulsory licensing shall be subject to an administrative appeal or a judicial litigation in accordance with the laws". It follows that the review of decisions regarding the payment of remuneration can be implemented under administrative appeal or judicial litigation against a part of decision compulsory on licensing invention provided for in Article 147.4.

To this point, it can be affirmed that Articles 146.1.d, 147.2 and 147.4 of the Intellectual Property Law as combined are fully compliant with the requirement of Article 31(j) of TRIPS.

Question 194

Please state which provision in the Intellectual Property Law complies with TRIPS Article 34 and explain how it complies.

Answer:

Article 203.4 of the Intellectual Property Law is fully compliant with Article 34 TRIPS on the burden of proof of defendant in the case of patented process , particularly, it reads:

"In a lawsuit against an infringement of the right to a patented invention, which is a production process in the following cases, the defendant shall prove that his or her products are made by a process other than the protected process:

- a) The product made by the protected process is new;
- b) The product made by the protected process is not new, but the owner of the protected process holds that the product of the defendant is made by the protected process he failed to identify the process used by the defendant despite that reasonable measures have been taken".

Therefore, in above cases, the process used by the defendant will be considered to be the protected process if the defendant cannot prove to the contrary.

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

Question 195

The definition of a geographical indication in Article 4.22 does not comply with the TRIPS definition, as it only describes a geographical indication as a "sign used to indicate a product originating from a specific area, locality, region or country", without reference to the quality, characteristics or reputation being attributable to the origin of the goods. This may have been an oversight, as Article 79.2 goes on to state that a geographical indication needs to have "reputation, quality or characteristics essentially attributable to the geographical conditions of the area, locality, territory or country corresponding to such geographical indication" in order to be eligible for protection.

Answer:

The definition stated in Article 22.1 of TRIPS in its nature is the definition of a geographical indication eligible for protection.

The definition on geographical indication and the conditions for a geographical indication to be protected in the Intellectual Property Law of Viet Nam are separated into two Articles of 4.22 and 79.2, respectively. The same is applied consistently to all other intellectual property objects (work, invention, industrial design, trademark, layout design, business secret, etc) so as to ensure consistence and science in the structure and language of the law.

In spite of the difference in the structure, the meaning of definition of a geographical indication eligible for protection in Article 22.1 of the TRIPS and Vietnamese Intellectual Property Law (combination of Articles of 4.22 and 79.2) is the same. Therefore, the Intellectual Property Law is consistent with TRIPS.

Question 196

Article 88 refers to who has the "[r]ight to registration of geographical indications", and states that "[t]he right to register geographical indications of Viet Nam belongs to the State".

- **How do foreign applicants have the right to registration of geographical indications under Law No. 50, as opposed to the "mode of filing registration applications" set out in Article 89?**

Answer:

The Intellectual Property Law commits to protect geographical indications of Viet Nam as well as other countries in conformity with TRIPS.

As the TRIPS just provides for subjects matter, conditions and level of protection of geographical indications without stipulating right holders thereof, therefore Vietnamese Intellectual Property Law introduces provisions on entities having the right to registration, ownership, management and use of geographical indications in applicable only to Vietnamese geographical indications. For foreign geographical indications, Viet Nam respects foreign national law. Particularly, regarding entities having the right to registration of geographical indications, according to Article 80.2 of the Intellectual Property Law (in conformity with Article 24.4 of TRIPS), a geographical indication is only protected in Viet Nam when it is protected in its country of origin. Therefore, any entities having the right to use or to file application for registration of geographical indications in its country will have right to file application for registration of such geographical indications in Viet Nam. The mode of exercise of the right to registration (directly or through a lawful representative in Vietnam)

shall comply with Article 89 of the Intellectual Property Law. In Viet Nam's view, two provisions, one on entities having right to registration and the other on mode of filing registration application for geographical indication in the Intellectual Property Law are not contrary. For example, the National Bureau of Inter-profession of Cognac (BNIC) has filed through France Embassy in Viet Nam the application for registration of "Cognac", which is currently protected in Viet Nam.

Question 197

Further, Article 121 states that the "owner of Viet Nam's geographical indications is the State", and that the State then regulates the use of Vietnamese geographical indications.

- **How is the ownership and regulation of foreign owned geographical indications treated under Law No. 50?**

Answer:

Regarding the right holder of ownership, management and use, the Intellectual Property Law just has specific provisions on Vietnamese geographical indications. For foreign geographical indications, any entities having right to ownership, management and use such geographical indication in its countries of origin will be recorded as such in Registry of Geographical Indication in Viet Nam. However, the exercise of ownership, management and use of geographical indications in Viet Nam shall comply with relevant provisions in Chapter IX of Intellectual Property Law.

The conformity with provisions of TRIPS on protection of geographical indications is ensured in Article 5.3 of Intellectual Property Law as follows: "Where the provisions of the international treaties to which the Socialist Republic of Viet Nam is party contravene the provisions of this Law, the former shall be applied".

- **Enforcement**

Question 198

The draft Report section on enforcement needs significant revisions.

Answer:

Viet Nam is updating and revising this section as per Working Party member's suggestion.

Question 199

Since the Intellectual Property Law does not provide expressly for criminal penalties, but makes clear that such penalties are to be provided for under the Criminal Code and regulations, one must look to those in order to make a determination of TRIPS compliance. It would be helpful in our evaluation of the relevant Criminal Code penalty provisions if we were provided with the definitions that will be set out in implementing regulations or judicial sentencing guidelines relating to the various gradations that are used in the Criminal Code, i.e. "serious consequences", "very serious consequences," and "particularly serious consequences."

Answer:

The use of terminologies of "serious consequences", "very serious consequences," and "especially serious consequences" in the legal documents on crimes and criminal procedures as well as application of legal provisions on such consequences in practical judgment on crimes in Viet Nam have been implemented in Viet Nam for a long time. However, the idea of criminal procedures has

only now been extended to the Intellectual Property area under the Law on Intellectual Property No. 50/2005/QH11 on 29 November 2005.

For example, prior to the passage of this Law, Paragraph 3.4 of the Joint Circular of Supreme People's Court, Supreme People's Prosecution, Ministry of Public Security and Ministry of Justice No. 02/2001/TTLT-TANDTC-VKSNDTC-BCA-BTP of 25 December 2001 on guiding the implementation of certain provisions of Chapter XIV – "Crime of ownership violation" of the 1999 Criminal Code provides as follows:

"In order to determine circumstances in which crime causes "serious consequences", "very serious consequences," and "especially serious consequences", in principle consequences are to be determined completely and comprehensively (damages in asset, in life, in health and other immaterial damages)."

The practice has shown that apart from damages in life, health and asset, there are also immaterial consequences which negatively impact on the implementation the Party's direction, the State policies, security, social safety and order, etc. In such cases, "serious consequences", "very serious consequences" and "especially serious consequences" caused by crime shall be determined on the circumstances of the case on particular cases.

VI. POLICIES AFFECTING TRADE IN SERVICES

Question 200

This section will need review and revision in light of the results of bilateral negotiations on services commitments and to reflect significant changes in Viet Nam's regulatory legislation.

In addition, we will be proposing language on licensing transparency and more detailed text concerning distribution, express delivery, road transportation, and telecommunications.

Answer:

We are looking forward to receiving these texts.

Question 201

On 29 September 2005, Viet Nam promulgated Decree No. 238/2005/QD/TTg allowing foreign entities or individuals to increase the share of listed Vietnamese enterprises they can own from 30 per cent to 49 per cent. With reference to paragraph 461, and in light of Decree No. 238, Viet Nam indicated at the recent Working Party meeting that it would move to increase an individual foreign legal entity or foreign individual's allowable share of registered capital in a listed Vietnamese joint-stock commercial bank or joint-stock financial company to 30 per cent. Can Viet Nam update this section to reflect the current policies in this area?

Answer:

According to Decision No. 36/2003/QD-TTg dated 11 March 2003 on issuing the Regulation on contributing capital and purchasing shares of foreign investors in Vietnamese enterprises, the maximum ratio of contributing capital and buying shares of foreign investors in Vietnamese enterprises, including banks is equal to 30 per cent of the charter capital of Vietnamese enterprises.

As for the ownership ratio of foreign organizations and individuals in enterprises listed in the stock market, Decree No. 238/2005/QD-TTg only adjusts the ownership ratio of foreign partners in enterprises which are listed, registered for doing transaction and doing business in the stock market. It allows foreign individuals and organizations to own up to 49 per cent of the total of investment

certificates listed and registered for doing business by a securities investment fund. It has no discrimination between joint-stock financial companies and joint-stock commercial banks. If they list or register for transaction at the Securities Transaction Centre, they will fall under the scope of this Decree. However, if they are not yet listed, they will not fall under the scope of the same legal document.

Question 202

With reference to paragraph 461 and Decree No.22/2006/ND-CP (promulgated 28 February 2006), we request that Viet Nam specify the minimum capital requirements that are intended to be implemented for the various types of credit institutions covered by this Decree, including 100 per cent foreign invested banks. We also request Viet Nam confirm that Decree No. 22 will permit foreign banking branches to establish their own ATM network. (Currently the Decree only refers to "transaction points" but we request information on ATMS specifically).

Answer:

Paragraph 461 related to banking services has been updated and adjusted to conform to recently promulgated regulations of Viet Nam in banking sector, including the Decree No. 22/2006/ND-CP dated 28 February 2006 (please refer to adjusted paragraph). Regarding the minimum capital requirement, Viet Nam will adjust the level of minimum capital requirement in accordance with the national treatment principle, regardless of domestic or foreign credit institutions operating in Viet Nam.

Regarding the ATM placement of foreign bank branches, Viet Nam already made a commitment on these issues in its offer for the banking sector within the framework of its WTO accession negotiations. Viet Nam confirms to fully implement its international commitments, upon which foreign bank branch operating in Viet Nam shall enjoy full MFN and NT in the placement of Automatic Teller Machines (ATMs).

Question 203

Paragraph 455 onwards, general comment: this section should be redrafted to reflect the new legislation.

Answer:

We take note of the comment and will work with Members of the Working Party to redraft this section.

Question 204

What are the criteria for awarding licenses in the financial sector (banking, insurance, securities)?

Answer:

Please find enclosed the Criteria for issuance of an insurance service licence and the Criteria for issuance of a securities service licence (Annex II).

Question 205

Proposed text for Working Party Report (paragraph 467):

The representative of Viet Nam confirmed that upon accession Viet Nam would ensure that Viet Nam's licensing procedures and conditions would not act as barriers to market access and would not be more trade restrictive than necessary. In accordance with Viet Nam's commitments under the WTO Agreement, the Draft Protocol and its Schedule of Specific Commitments, the representative of Viet Nam confirmed that for those services included in Viet Nam's Schedule of Specific Commitments, Viet Nam would ensure that:

- (a) Viet Nam's licensing procedures and conditions were published prior to becoming effective;
- (b) In that publication, Viet Nam would specify reasonable time frames for review and decision by all relevant authorities in Viet Nam's licensing procedures and conditions;
- (c) Applicants would be able to request licensing without individual invitation;
- (d) Any fees charged, which were not deemed to include fees determined through auction or a tendering process, would be commensurate with the administrative cost of processing an application;
- (e) The competent authorities of Viet Nam would, after receipt of an application, inform the applicant whether the application was considered complete under Viet Nam's domestic laws and regulations and in the case of incomplete applications, identify the additional information that was required to complete the application and provide the opportunity to cure deficiencies;
- (f) Decisions would be taken promptly on all applications;
- (g) If an application was terminated or denied, the applicant would be informed in writing and without delay the reasons for such action. The applicant would have the possibility of resubmitting, at its discretion, a new application that addressed the reasons for termination or denial;
- (h) If an application was approved, the applicant would be informed in writing and without delay. The licence or approval would enable the applicant to start the commercial operations upon registration of the company with [name of relevant Vietnamese authority] for fiscal and other similar administrative purposes. This registration would be completed within 2 months of the submission of a complete file, as required by public [name of relevant Vietnamese authority] regulations, and in accordance with Viet Nam's Schedule of Specific Commitments;
- (i) Where Viet Nam required an examination to licence professionals, such examinations would be scheduled at reasonable intervals.

The Working Party took note of these commitments.

Answer:

There are some proposals here that are not totally clear to us. We would like to discuss with Members of the Working Party in order to understand it better before agreeing on any text.

VII. TRANSPARENCY

Question 206

With reference to paragraph 474, we request that Viet Nam provide further details in the report of the mass media outlets and internet sites where these draft legal instruments are published for comment.

Answer:

At present, Viet Nam has neither specializing newspaper, magazine nor website that publish drafts of legal and normative documents. Appropriate means for announcement of those drafts have been chosen based on the content, scope and direct impact of the documents. For example drafts of legal and normative documents that have direct effects on the business community will be put out on the website (<http://www.vibonline.com.vn>) of the Viet Nam Chamber of Commerce and Industry. Besides, Ministries and agencies also have their websites for publishing in Vietnamese drafts of legal and normative acts relating to their areas of authority. For instance, drafts of legal and normative acts in investment to be brought out at the website www.mpi.gov.vn; trade rules and regulations to be put out at the web www.mot.gov.vn; documents on tax and finance to be published on the web www.mof.gov.vn and many other documents to be put out at the Ministry of Justice www.moj.gov.vn.

Question 207

Viet Nam has taken great strides in the past five years to improve transparency. Indeed, the degree to which Viet Nam incorporated public comments in the drafting of new laws last year was most impressive. We support the proposed commitment language for this section and we request Viet Nam to remove the brackets.

Answer:

There are some proposals here that are not totally clear to us. We would like to discuss with Members of the Working Party in order to understand it better before agreeing on any text.

ANNEX I

List of culture and information legal documents with stipulations on types of cultural products prohibited from popularization, circulation and import in Vietnam

(those which are reactionary or superstitious or pornographic, etc.)

Legal documents with general stipulations on import and export:

1. Circular No. 48/2006/TT-BVHTT of 28 April 2006 by the Ministry of Culture and Information guiding the implementation of the government's Decree No. 12/2006/ND-CP detailing the implementation of the Trade Law as regards international goods sales and purchases and activities such as agenting, buying, selling, processing or transiting goods with foreign partners: Point 2.2, Section 2, Part I, and Section 2, Part II.
2. Decree No. 88/2002/ND-CP of 7 November 2002 on the management of the export and import of cultural products not for profitable purposes: Section 1, Article 4, Chapter II.

Legal documents specializing in culture and information

Cultural activities and services:

4. Decree No. 11/2006/ND-CP of 18 January 2006 issuing regulations for the operation of cultural activities and business in public cultural services: Article 4, Chapter 1.
5. Circular No. 08/2000/TT-BVHTT of 28 April 2000 by the Ministry of Culture and Information guiding the management of computer games: Article 4, Part I.
6. Decision No. 41/2004/QD-BVHTT of 2 July 2004 by the Minister of Culture and Information issuing regulations for professional art performances and their organization: Article 3, Chapter I.
7. Decision No. 41/2002/QD-BVHTT of 31 December 2002 by the Minister of Culture and Information issuing regulations for exhibition hosting: Article 4, Chapter I.
8. Decision No. 07/2003/QD-BVHTT of 13 March 2003 by the Minister of Culture and Information issuing regulations for music teaching: Article 4, Chapter I.
9. Decision No. 55/1999/QD-BVHTT of 5 August 1999 by the Minister of Culture and Information issuing regulations for the production, export, import, circulation and trade in audio tapes and CDs and music and theater videos, VCDs and DVDs: Article 3, Chapter I.

Fine arts and photography:

10. Decision No. 10/QD-BVHTT of 15 May 2000 by the Minister of Culture and Information issuing regulations for the operation of fine arts exhibition and galleries: Article 4, Chapter I
11. Decision No. 29/2000/QD-BVHTT of 20 November 2000 by the Minister of Culture and Information issuing regulations for photographic activities: Article 4, Chapter I.
12. Decision No. 17/2004/QD-BVHTT of 5 May 2004 by the Minister of Culture and Information issuing regulations for the reproduction of plastic art works: Article 11, Chapter II.

Advertising:

13. Ordinance on Advertising No. 39/2001/PL-UBTVQH of 16 November 2001: Article 5, Chapter I.
14. Decree No. 24/2003/ND-CP of 13 March 2003 detailing the implementation of the Ordinance on Advertising: Article 3, Chapter I.

15. Circular No. 43/2003/TT-BVHTT of 16 July 2003 guiding the implementation of Decree No. 24/2003/ND-CP of 13 March 2003 detailing the implementation of the Ordinance on Advertising: Point 2 (e), Section I.

The cinema:

16. Decree No. 48/CP by the government on the organization and operation of the cinema: Article 2, Chapter 1 (section 3).
17. Decision No. 2455/QD-DA of 9 August by the Minister of Culture and Information issuing regulations for movie approval: Article 4, Chapter I.

The press:

18. The Law on the Press 1989: Article 10, Chapter III.
19. Decree No. 133 of 20 April 1992 by the Council of Ministers detailing the implementation of the Law on the Press 1989: Article 4, Chapter I.
20. Decree No. 51/2002/ND-CP of 26 April 2005 by the government detailing the implementation of the Law on the Press and the Law on Amendment and Supplementation of the Law on the Press: Article 5, Chapter III.
21. Decision 28/2002/QD-BVHTT of 21 November 2002 by the Minister of Culture and Information issuing regulations for the publication of newsletters, brochures and leaflets; issuance of press releases; running and distribution of newsletters on electronic screens by foreign agencies or organizations or legal entities with foreign elements in Vietnam: Article 5, Chapter I.

Publishing:

22. The Law on Publishing No. 30/2004/QH11: Article 10, Chapter I.

Libraries:

23. The Ordinance on Libraries No. 31/PL-UBTVQH: Article 5, Chapter I.

The Internet:

24. Circular No. 02/2005/TTLT-BCVT-VHTT-CA-KHDT of 14 July 2005 on the management of Internet agents: Clause 3 (a,b).
25. Decision No. 27/2002/QD-BVHTT of 10 October 2003 by the Ministry of Culture and Information issuing regulations for the management and licensing of information supply and establishment of electronic news websites on the Internet: Article 4, Chapter I.

Publication and popularization of works abroad:

26. Decree No. 72/2000/ND-CP of 5 December 2000 by the government on the publication and popularization of works abroad: Article 5.

ANNEX II

Criteria For Insurance Services License and Securities Services License

I. Criteria for an Insurance Services License

No.	Name of license	Legal framework	Criteria for an insurance business license
1.	Licence for establishment of an insurance, insurance broker representative office in Viet Nam.	Insurance Business Law.	<p>Article 107 Conditions for issuance of licence for establishment of a representative office in Viet Nam</p> <p>The conditions for issuance of a licence for establishment of a representative office in Viet Nam to a foreign insurer or insurance broker shall comprise:</p> <ol style="list-style-type: none"> 1. The foreign insurer or insurance broker has been operating for five years; 2. The foreign insurer or insurance broker has a co-operative relationship with Vietnamese bodies and organizations.
2.	Licences for establishment and operation of an insurer.	Insurance Business Law.	<p>Article 63 Conditions for issuance of licences for establishment and operation</p> <p>The conditions for issuance of a licence for establishment and operation shall comprise:</p> <ol style="list-style-type: none"> 1. The amount of paid-up charter capital is not less than the level of legal capital required by the regulations of the Government; 2. There is an application requesting issuance of a licence for establishment and operation in accordance with Article 64 of this Law; 3. The form of the enterprise and its charter comply with the provisions of this Law and the provisions of other relevant laws; 4. The management personnel¹ have managerial skills and have expertise and professional qualifications in insurance.²
3.	Licences for establishment and operation of an insurance broker.	Insurance Business Law.	<p>Article 93 Issuance of licences for establishment and operation</p> <p>The issuance of licences for establishment and operation of insurance brokers shall be carried out in accordance with the provisions in Articles 62 and 63, Clauses 1, 2, 3 and 4 of Article 64, and articles 65, 66, 67, 68 and 69 of this Law.</p> <p>Article 106 Conditions for issuance of licence for establishment and operation</p> <p>The conditions for issuance of a licence for establishment and operation to an insurer or insurance broker with foreign owned capital shall comprise:</p> <ol style="list-style-type: none"> 1. The conditions prescribed in Article 63 of this Law; 2. The foreign insurer or foreign insurance broker is currently legally operating and has normal financial standing; 3. The foreign insurer or foreign insurance broker is licensed by the authorized body of its country to conduct insurance business or to conduct insurance broking in the sectors in which it proposes to operate in Viet Nam.

¹ The literal translation is "personnel in management and operation".

² There is no "fit and proper person" condition for management personnel of an insurer, as there is for individual insurance agents in Article 86.3.

II. Criteria for a Securities Services License

No.	Name of license	Legal framework	Criteria for a securities business license
1.	Securities business license.	<p>Decree No. 144/2003/ND-CP dated 28 November 2003 of the Government on securities and securities markets;</p> <p>Decision No. 55/2004/QD-BTC dated 17 June 2004 of the Minister of Finance to promulgate the Regulation on organization and operation of a securities company.</p>	<p>A securities company, which applies for a securities business licence shall be either limited liability company or joint-stock company and meet the following requirements:</p> <ul style="list-style-type: none"> - Having set up a business plan in line with the objectives of socio-economic development and growth of the securities industry; - Having adequate premises and technical facilities for securities business; - Having the minimum legal capital as prescribed for each type of securities business (Brokerage: VND 3 billion; Dealing on own accounts: VND 12 billion; Underwriting: VND 22 billion; Financial and securities investment advisory: VND 3 billion; Securities investment portfolio management: VND 3 billion); - Having its CEO, Vice-CEO and its practitioners qualified for being granted the securities practitioner licence by the State Securities Commission; - The underwriting licence shall be granted only to securities companies that have the business licence of securities dealing (dealing on their own accounts).
2.	Practitioner license; Fund management practitioner license.	<p>Decree No. 144/2003/ND-CP dated 28 November 2003 of the Government on securities and securities markets;</p> <p>Decision No. 55/2004/QD-BTC dated 17 June 2004 of the Minister of Finance to promulgate the Regulation on organization and operation of the securities company;</p> <p>Decision No. 73/2004/QD-BTC dated 28 November 2004 of the Minister of Finance to promulgate the Regulation on organization and operation of the investment securities fund and investment securities fund management company.</p>	<p>Upon request by the securities company, the investment fund management company, the securities business practitioner licence shall be granted to individuals working for that company and meeting the following requirements:</p> <ul style="list-style-type: none"> - Having adequate legal and civil behavior capacity; - Meeting the requirements of qualification (having relevant university degree(s)); - Having obtained all securities professional certificates granted by the State Securities Commission; - Not being criminally prosecuted, or serving imprisonment terms, or having the practitioner licence revoked by the Court. <p>A foreign citizen shall have to meet the following requirements to be granted a securities business practitioner licence:</p> <ul style="list-style-type: none"> - Meeting the requirements of qualification (having relevant university degree); - Not being criminally prosecuted, or serving imprisonment terms, or having the practitioner licence revoked by the Court; - Having practitioner licence granted by relevant foreign regulator and having the Certificate of applicable laws in the securities industry granted by SSC; - Having working permit in Viet Nam.

No.	Name of license	Legal framework	Criteria for a securities business license
3.	License for offering investment fund units to public.	<p>Decree No. 144/2003/ND-CP dated 28 November 2003, on securities and securities markets;</p> <p>Decision No. 73/2004/QD-BTC dated 18 November 2004 of Minister of Finance to promulgate the regulation on organization and operation of securities investment fund and fund management companies.</p>	<ul style="list-style-type: none"> - Having minimum chartered capital of VND 5 billion; - Issuing investment units to not less than 50 investors; - Having appropriate scheme on investment of the proceeds obtained from issuance of the investment units in accordance with the applicable laws.
4.	Registration for establishment of public investment fund and listing of investment units.	<p>Decree No. 144/2003/ND-CP dated 28 November 2003, on securities and securities markets;</p> <p>Decision No. 73/2004/QD-BTC dated 18 November 2004 of Minister of Finance to promulgate the regulation on organization and operation of securities investment fund and fund management companies.</p>	<p>Eligible application shall include the following documents:</p> <ul style="list-style-type: none"> - Application for registration of establishment of securities investment fund; - Article of Association of securities investment fund; - Contract for management of fund assets; - List of participants contributing capital for establishment of securities investment fund; - Prospectus; - List and brief biographies of members of representative board; written commitments of independent members in the representative board for their independence with the fund management company; - Commitment of founders and members of representative board for no transfer of their investment fund units within 2 years from the date of listing; - Minutes and other relevant records to General Meeting of Investors
5.	Licenses for management of securities investment fund.	<p>Decree No. 144/2003/ND-CP dated 28 November 2003, on securities and securities markets;</p> <p>Decision No. 73/2004/QD-BTC dated 18 November 2004 of Minister of Finance to promulgate the regulation on organization and operation of securities investment fund and fund management companies.</p>	<ul style="list-style-type: none"> - Being joint stock companies, limited liability company, having minimum legal capital of VND 5 billion; - Having sufficient premises and facilities for fund management operation; - CEO, Vice CEO and other executives of the fund are qualified to be granted the securities practitioner licence of investment fund management.

No.	Name of license	Legal framework	Criteria for a securities business license
6.	License of securities depository.	<p>Decree No. 144/2003/ND-CP dated 28 November 2003 on securities and securities markets;</p> <p>Decision No. 60/2004/QD-BTC by the Financial Minister to promulgate regulation on securities registry, depository, clearing and settlement.</p>	<p>Criteria for licensing securities depository licence to domestic commercial banks and branches of foreign banks:</p> <ul style="list-style-type: none"> - Having licence for establishment and operation in Viet Nam; - Having sound financial status; - Having sufficient infrastructure for providing securities registry, depository, clearing and settlement services; - Having at least two professional practitioners and a member of Management Board who are experts on securities; - Foreign banks having branches in Viet Nam is permitted to provide securities depository services in accordance with laws of their original country; - Securities firms are permitted to provide securities depository service.
7.	License for stock/bond/ investment fund unit listing.	<p>Decree No. 144/2003/ND-CP dated 28 November 2003 on securities and securities markets;</p> <p>Circular No. 59/2004/TT-BTC dated 28 November 2004 by Ministry of Finance providing guidelines for stock/bond listing on securities markets.</p>	<ol style="list-style-type: none"> 1. Stock Listing: <ul style="list-style-type: none"> - Being joint stock company with chartered capital not less than VND 5 billions - Having been profit making for two consecutive years right before the year of filing the listing application; - Having members of Board of Directors, Management Board, and Supervision Board pledge on holding at least 50% of their current stock holding in 3 years since the day of listing; - Having at least 20% of company's equity capital held by outside 50 shareholders (15% in the case where companies have equity capital of more than VND 100 billions). 2. Bond Listing: <ul style="list-style-type: none"> - Being joint stock company, limited liability company with the chartered capital not less than VND 10 billions; - Having been profit making for 2 consecutive years right before the year of filing the listing application and having a sound financial condition; - Having at least 50 bond holders. 3. Government bond is listed upon the request of issuers 4. Listing of investment fund unit: <ul style="list-style-type: none"> - The total value of investment fund units to be issued is not less than VND 5 billions; - Having at least 50 investment unit holders.
8.	Registration for public offering of stock (instead of License of stock public offering).	<p>Decree No. 144/2003/ND-CP dated 28 November 2003 on securities and securities markets;</p> <p>Circular No. 60/2004/TT-BTC dated 18 June 2004 of Ministry of Finance providing guidelines on public offering of stock.</p>	<ul style="list-style-type: none"> - Having the minimum chartered capital of VND 5 billion at time of securities public offering registration; - Having been profit making in the year prior to the one of applying for public offering registration; - Having the feasibility study to utilize the proceeds from the issuance of shares approved by General Shareholder Meeting; - Offering of shares done by market intermediaries; - Having financial statements independently audited.

No.	Name of license	Legal framework	Criteria for a securities business license
9.	Registration for a public offering of bond.	<p>Decree No. 48/ND-CP dated 11 July 1998 of The Government on Securities and securities market;</p> <p>Circular No. 75/TT-BTC dated 23 July 2004 of the Ministry of Finance providing guidelines on a public offering of bond.</p>	<ul style="list-style-type: none"> - Having a minimum chartered capital of VND 10 billion at time of public offering registration; - Having been profit making in the year before the one of public offering registration; - Having the feasibility study to utilize the proceeds obtained from the issuance of bonds and to fulfill the obligations to the investors approved by The Board of Directors or Board of members or capital owners; - Having the public offering done by an underwriter; - Designating the bondholders' trustee.

Note: Criteria for securities service licensing is now being provided for in Decree No. 144/2003/ND-CP dated 28 November 2003 of the Government on securities and securities markets. This Decree will be replaced by the Securities Law which will tentatively be discussed and passed in the 2nd half of 2006 by the National Assembly.

ANNEX III

Table 8 (a): Schedule of Commitments on Import Trading Rights

HS	Description	Schedule	Rationale
	Pharmaceutical products		
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	Essential to human life
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		
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		

HS	Description	Schedule	Rationale
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)		
3004.90. 72	--- Containing dichlorophen (INN)		
3004.90. 79	--- Other		
3004.90. 80	-- Transdermal therapeutic systems (TTS) patches for cancer or heart diseases		
3004.90. 91	--- Containing sulpiride (INN), cimetidine (INN), ranitidine (INN), aluminium hydroxide or magnesium hydroxide or oresol		
3004.90. 92	--- Containing piroxicam (INN) or ibuprofen (INN)		
3004.90. 93	--- Containing phenobarbital, diazepam, chlorpromazine		
3004.90. 94	--- Containing salbutamol (INN)		
3004.90. 95	--- Closed sterile water for inhalation, pharmaceutical grade		
3004.90. 96	--- Containing o-methoxyphenyl glyceryl ether (Guaifenesin)		

HS	Description	Schedule	Rationale
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	Essential to human life
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		
	Cinematographic film		
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		
	Unused postage, printed cards, calendars...		
4907	Unused postage, check forms, banknotes, stock, etc...	2009	Sensitive to public morals
4907.00. 10	- Banknotes, being legal tender		
4907.00. 20	- Unused postage stamps		
4907.00. 30	- Revenue or similar stamps		
4907.00. 40	- Stock, share or bond certificates and similar documents of title; cheque forms		
4907.00. 90	- Other		
4909	Printed or illustrated post cards, greeting cards, etc....	2009	Sensitive to public morals
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	Sensitive to public morals
4910.00. 00	Calendars of any kind, printed, including calendar blocks.		
4911	Printed matter nesoi, incl print pictures & photos...	2009	Sensitive to public morals
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		

HS	Description	Schedule	Rationale
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		
	Industrial printers		
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	Sensitive to public order
8443.11. 10	- - - Electrically operated		
8443.11. 20	- - - Not electrically operated		
8443.12. 10	- - - Electrically operated		
8443.12. 20	- - - Not electrically operated		
8443.19. 10	- - - Electrically operated		
8443.19. 20	- - - Not electrically operated		
8443.21. 10	- - - Electrically operated		
8443.21. 20	- - - Not electrically operated		
8443.29. 10	- - - Electrically operated		
8443.29. 20	- - - Not electrically operated		
8443.30. 10	- - Electrically operated		
8443.30. 20	- - Not electrically operated		
8443.40. 10	- - Electrically operated		
8443.40. 20	- - Not electrically operated		
8443.59. 10	- - - Platen presses		
8443.59. 20	- - - Screen printing machinery for the manufacture of PCB/PWBs [ITA/2 (AS2)]		
8443.59. 90	- - - Other		
8443.60. 10	- - Electrically operated		
8443.60. 20	- - Not electrically operated		
8443.90. 10	- - Of screen printing machinery for the manufacture of PCB/PWBs [ITA/2 (AS2)]		
8443.90. 20	- - Other, for electrically operated machines		
8443.90. 90	- - Other		
	Other machinery		
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		

HS	Description	Schedule	Rationale
8525.10.30	-- Data compression tools		
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 and radio remote control apparatus	2009	Sensitive to national security
8526.10.90	-- Other		
8526.91.90	--- Other		
8526.92.00	-- Radio remote control apparatus		

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