

# WORLD TRADE ORGANIZATION

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**Working Party on the  
Accession of Viet Nam**

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## **ACCESSION OF VIET NAM**

### Additional Questions and Replies

The following submission is being circulated at the request of the Delegation of the Socialist Republic of Viet Nam.

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## II. ECONOMIC POLICIES

### - Investment Regime

#### Question 1

**Paragraph 39:** Please provide more detailed information on the provisions of the relevant decree which defines prohibited and conditional business sectors. Please include more specific information on what sectors are captured in those decrees, and the criteria upon which the Government can decide to extend the coverage of these provisions to other conditional or prohibited sectors.

Answer:

Decree No. 59/2006/ND-CP of 12 June 2006 provided for the lists of goods and services in which business is prohibited, restricted and subject to conditions. An English translation of this Decree had been provided to the Working Party prior to the last Working Party Meeting. We would like to resend the lists of goods and services in which business is prohibited, restricted and subject to conditions in the Annex 1 to this document.

According to Article 25 of the Commercial Law, the Government can decide to add or otherwise amend the lists according to: (i) the policy needs and objectives of Viet Nam in a certain period and (ii) commitments of Viet Nam under the international treaties to which Viet Nam is a member. The procedures are in accordance with Article 4.2 of the Decree which provided that "in necessary cases, the Minister of Trade may make a submission to the Prime Minister of the Government on additions and amendments to the lists...".

Article 3.2 of the Decree echoes the provisions of the Commercial Law and provides that "Where an international treaty of which the Socialist Republic of Viet Nam is a member contains provisions on goods and services in which business is prohibited, goods and services in which business is restricted, and goods and services in which business is subject to conditions and which are inconsistent with the provisions of this Decree, the provisions of such international treaty shall apply."

#### Question 2

**Paragraph 42:** Please indicate the numbers of the Decrees referenced in this paragraph.

Answer:

These numbers are not yet available as the Decree providing detail regulations for the implementation of the Investment Law 2005 has not been promulgated.

#### Question 3

**Paragraph 42:** Please include the following language in paragraph 42, and an appropriate explanation from Viet Nam:

"A Member noted that the Enterprise Law 2005 did not appear to require the re-registration of existing enterprises. The Member asked Viet Nam to explain what governing law would apply to an enterprise that chose not to re-register, as the previous Law on Foreign Investment became redundant on 1 July 2006 and the new Investment Law 2005 and Enterprise Law 2005 do not provide guidance on such enterprises. The Member also asked Viet Nam whether, once the two-year time limit for re-registration passed (as stipulated by the Enterprise Law 2005), an

**enterprise could still choose to re-register if this subsequently becomes a desired option. The representative of Viet Nam replied that..."**

Answer:

The two-year time limit for re-registration has been provided for in Enterprise Law 2005. Therefore, the option to re-register is only available within this two year time limit.

We can agree to the addition of the following text in order to clarify the issue:

"..... The representative of Viet Nam replied that a foreign invested enterprise set up prior to the date of entry into force of the Enterprise Law 2005 and the Investment Law 2005 that chose not to re-register was still allowed to conduct business operations within the scope of its business lines, the terms stated in its investment licence and its corporate charter. With respect to the issues that were not specifically stipulated in its investment licence and corporate charter, such enterprise would be subject to the two above-mentioned Laws".

#### **Question 4**

**Paragraph 49: Please include the following wording with an appropriate reply from Viet Nam**

**49. A Member noted that with reference to paragraph 49, and the reference to stock-holding companies, it would appreciate Viet Nam confirming that under the Enterprise Law 2005 and its decrees, a foreign investor can register a stock-holding enterprise and under that same enterprise form, apply to establish a number of different investment projects, without the need to register new enterprises each time a new investment project is developed. The Member also requested Viet Nam advise in which Decrees specific guidance on this issue will be provided. The Representative of Viet Nam replied...**

Answer:

We can agree to the addition of the following text in order to clarify the issue:

"The Representative of Viet Nam replied that in accordance with the Investment Law 2005 and its implementing regulations, foreign invested enterprises that had been established in Viet Nam, including a stock-holding enterprise, would be permitted to carry out new investment projects without the need to register for a new enterprise, unless otherwise provided for by the laws."

Rationale: As a general rule, foreign invested enterprises that had been established in Viet Nam, including a stock-holding enterprise, would be permitted to carry out new investment projects without the need to register for a new enterprise. However, in some special cases that are provided for in other laws, a separate entity may be required. For example, to register a bank, a separate banking institution shall be set up. Thus, a separate enterprise is required.

#### **Question 5**

**Paragraph 52: We welcome the addition of this paragraph. As we were not involved in the drafting of this paragraph, we would appreciate clarification of what "provisions of the enterprise's original Charter" could be modified. In particular, we ask that Viet Nam confirm in this paragraph that modification of the enterprise's original Charter could include changes in relation to the size of majority required to take decisions on those issues detailed in paragraph 86.**

Answer:

There was an editing error. Paragraph 52 should be moved to the section on "Policies affecting trade in services", right after paragraph 491, to become new paragraph 492. Paragraph 490, 491 and 52 should be read together to understand their meaning.

We have the understanding that the section on investment would contain no commitment language.

**Question 6**

**Paragraph 34 and following: conditional business sectors: Annex D of the "Decree providing guidelines for implementation of law on investment" lists the sectors in which investment is conditional. Yet the list in Annex D is not crystal clear e.g. we do not understand why we find under paragraph 11 "import, export and distribution business" and request Viet Nam to delete this section of the list. With regards to Annex D paragraph 14, we wish to ask Viet Nam whether the Certificate issuing Authority will have the competence to issue certificates on the basis of this Annex respectively the international commitments or whether an implementing Decree of the international commitments will first be necessary.**

Answer:

Import, export and distribution business is a sector in which investment shall be subject to certain conditions in accordance with Viet Nam's obligations in the WTO.

The competent agencies would issue the investment certificate based upon the provisions of this Annex and the provision of a legal document which will be issued by the Minister of Trade announcing the schedule for and the scope of business activities of the foreign traders. Article 3.2 of Decree No. 12/2005/ND-CP dated 23 January 2006 of the Government has authorized the Minister of Trade to do so in accordance with Viet Nam's commitments under international treaties (i.e., including commitments under the WTO).

**Question 7**

**Decree providing guidelines for implementation of law on investment, Appendix D: contrary to the Decree making detailed provisions for implementation of the commercial law, we cannot see any indication of the source in which the investment conditions that would be applied by the competent authorities, are laid down. We request Viet Nam to provide more clarity on this issue.**

Answer:

Annex D cannot provide for detailed investment conditions for each and every specific sector as well as the applicable legal documents as conditions in some sectors are subject to Viet Nam's commitments in the WTO, which have not been finalized. Upon Viet Nam's accession to the WTO, in accordance with Viet Nam's commitments, the relevant ministries and agencies will announce the schedule and conditions for specific sectors.

**Question 8**

**Paragraph 41 and following: due to the fact that Investment Registration Procedures are different for domestic investment projects compared to foreign projects, it is important to clearly define the two categories. Neither the "Law on Enterprises" nor the "Law on Investment" nor the "Decree providing guidelines for implementation of law on investment"**

provide for such clear definition. The only form for which some kind of definition is available is for shareholding companies, but even in that case the definition raises questions. Article 12 of the before mentioned Decree says: "...A shareholding company with foreign invested capital must have at least one founding shareholder being a foreign investor. ..." What happens in the case a foreign investor is buying in a domestically owned shareholding company? Does this imply that this company has to reapply for an investment licence (e.g. in case the previously domestic company had only a business registration). What is the meaning of "founding member"? Article 80, paragraph 2 of that same Decree is provoking the same kind of questions. We would like to ask Viet Nam to provide clear definitions in the relevant Decrees for all types of enterprises: limited liability companies, shareholding companies, partnerships, and sole proprietorships. Namely, but not exclusively, the case of joint-ventures should be made clear (e.g. as long as foreign participation is below 50 per cent the enterprise is considered to be domestic). We would also like to know the status of a foreign invested enterprise established before the entry into force of the CIL and the UEL that decides to fully convert into an enterprise operating under the two laws. Is it deemed to be domestic or foreign?

Answer:

Article 12 of the draft Decree is applicable only to newly established foreign invested shareholding companies. It is not applicable to foreign investors buying shares of existing shareholding companies. A Vietnamese shareholding company which sold its shares to foreign investor(s) is only required to register for amendment of Business Registration to reflect the changes with respect to its shareholders, its charter capital and other changes (if any), without having to apply for a new Investment Licence.

The definition of "founding shareholders" is stipulated in Article 4.10 of the 2005 Enterprise Law. All types of enterprises (i.e. limited liability companies, shareholding companies, partnerships, and sole proprietorships) are provided for respectively in Chapter III, IV, V, of the Enterprise Law 2005. Please refer to these chapters for details.

The existing foreign invested enterprises which re-register to organize and operate under the 2005 Enterprise Law are still considered as foreign invested enterprises.

**Question 9**

**Decree providing guidelines for implementation of Law on Investment:** At several places (e.g. Article 13, 14) the Decree stipulates conformity with conditions and committed schedules in international Treaties of which Viet Nam is a member. In our view, international treaties form the floor and not the ceiling of business conditions or to put it differently: Viet Nam should be in a position to undertake autonomous liberalization. We would like to ask Viet Nam to provide for this flexibility and add: "not less favourable than the commitments undertaken in international treaties to which Viet Nam is a member."

Answer:

We thank for the comment and will consider it in the process of drafting the legal documents.

**Question 10**

**Decree providing guidelines for implementation of law on investment, Article 50:** What is the relationship between Article 50, paragraph 2 (a) and 2 (b)? Does there need to be a demand to sell on the Vietnamese market? Or could there be products sold on the domestic market produced in export processing zones the import of which is prohibited?



Answer:

Article 50.2 (a) and Article 50.2 (b) are designed simply to make sure that Export Processing Zones (EPZs) will operate in accordance with international practices (i.e. purchases and sales of goods between enterprises inside the EPZs and those outside the EPZ are considered as import-export transactions).

**Question 11**

**Decree providing guidelines for implementation of law on investment, Article 53 related to projects for which the Prime Minister shall approve issuance of investment certificates: Article 34, paragraph 2 mentions conditions that need to be satisfied in order to receive an investment licence. Article 53 requires the approval of the Prime Minister for certain investment licenses. However, no conditions are stipulated. On which basis does the Prime Minister decide whether to issue an investment certificate or not?**

Answer:

The criteria that are used ~~for~~ **in the consideration of the projects that are** subject to the approval by the Prime Minister are clearly stipulated in Article 48 and Article 49 of the 2005 Investment Law.

**Question 12**

**Decree on business registration and business registries: Answer to Question 4 in document WT/ACC/VNM/44 says that an Investment Certificate is also considered and serves as a Business Registration Certificate. Could Viet Nam indicate where this is reflected in the above-mentioned decree? We would also request Viet Nam to integrate the response to Question 4 in the draft report.**

Answer:

This issue is provided for in detail in Article 20 of the 2005 Enterprise Law and Article 50.1 of the 2005 Investment Law. Therefore, no further provisions would be required in the implementing Decree. Viet Nam agrees to incorporate the response to Question 4 in the Draft Report.

**Question 13**

**Decree making detailed provisions for implementation of the commercial law with respect to goods and services in which business is prohibited, restricted and subject to conditions, Article 4, paragraph 2: this Article stipulates that "in necessary cases, the Minister of Trade may make a submission to the Prime Minister of the government on additions and amendments to the lists stipulated in clause 1 of this article". The formulation "in necessary cases" is very vague. Viet Nam should ensure that the formulation guarantees conformity with GATT Articles XX and XI as well as GATS Articles XIV and XIVbis. This should then be reflected in the Draft Report.**

Answer:

Decree No. 59/2006/ND-CP of 12 June 2006 is to stipulate detailed provisions for the implementation of Article 25 of the Commercial Law. Article 25.1 provides that there are two criteria for the promulgation of the lists: (i) the economic - social conditions of Viet Nam (i.e. the policy needs and objectives) in a certain period; and (ii) the international treaties of which Viet Nam is a member.

As such, it has already been provided for the Commercial Law and Decree No. 59 that these lists are in conformity with the international treaties (i.e., including the WTO Agreement when Viet Nam becomes a WTO Member).

We have the understanding that the section on investment would contain no commitment language but are open to any suggestion to put the above information in the appropriate sections of the Draft Report.

#### **Question 14**

**Decree making detailed provisions for implementation of the commercial law with respect to goods and services in which business is prohibited, restricted and subject to conditions, Article 6 paragraph 1 (dd): we do not understand this provision. Could you please explain?**

Answer:

Article 6.1.dd of Decree No. 59/2006/ND-CP reads: "The scope, scale, time, and location of business and the number of traders conducting business activities with respect to goods and services in which business is restricted shall comply with the specific regulatory requirements and the master plan for business network development for such goods and services in each period".

This provision only applies to the List of goods and services in which business is restricted (as in the Decree No. 59/2006/ND-CP, there are eight categories of such goods and services as they are considered to cause harmful effect to security, social order or public health). Examples, which are taken from different legal documents in Viet Nam, are as follows:

Restriction in terms of scope of business: for cigarettes, traders that are granted business licenses for cigarette wholesale or wholesale agency are only allowed to sell cigarettes to those who have obtained business licenses in cigarettes.

Restriction in terms of scale of business: dancing halls must be at least 80 m<sup>2</sup> in floor areas each and at least 200 meters far from schools, hospitals, religious and belief establishments, historical-cultural relics and State administrative agencies, ensuring conditions for prevention and fight against fires and explosion.

Restriction in terms of time of business: dancing halls are prohibited to operate from 00:00 to 08:00 hrs.

Restriction in terms of location of business: for cigarettes, selling cigarettes is prohibited at schools, hospitals, cinemas, theatres, cultural and art performance houses.

Restriction in terms of number of traders: for cigarettes, the competent Government authorities can determine the number of traders permitted to trade in cigarettes in a geographical area on the basis of different criteria such as: the population and population density, demand and living conditions of citizen, conditions to ensure public order and social security.

#### **Question 15**

**Decree making detailed provisions for implementation of the commercial law with respect to goods and services in which business is prohibited, restricted and subject to conditions, Appendix III/I. Goods and services in respect of which a certificate of satisfaction of business conditions is required/B 14 – Multi-modal international transport services: We would like to request Viet Nam to provide the reasons for listing these services as conditional services.**

Answer:

As mentioned in the Appendix III, Decree No. 125/2003/ND-CP of the Government dated 29 October 2003 on international multi-modal transport regulates that the Government shall perform the unified state management over multi-modal transport by granting business certificates.

International multi-modal transport services are complex (involving different modes of transport and often different legs in different countries). Therefore, in addition to the requirements of high-quality facilities and means of transport, multi-modal transportation businesses need to have both legal and financial competence to be competent in providing these services. Therefore, regulating the business conditions is necessary to ensure that the service providers are competent with a view to protecting the rights of cargo consignors and facilitating the solution of disputes.

**Question 16**

**Decree making detailed provisions for implementation of the commercial law with respect to goods and services in which business is prohibited, restricted and subject to conditions, Appendix III/II. Goods and services in which business is subject to conditions but in respect of which a certificate of satisfaction of business condition is not required: could Viet Nam explain the kind of conditions that are applied to "10. Building materials"?**

Answer:

Those conducting business activities in building materials are required to comply with the conditions such as:

- Meeting environment protection, fire and explosion preventions standards and requirements;
- Ensuring public order and traffic safety by not encroaching roads, pavements and roadways; and
- Putting up a signboard which clearly displays the name of the shop and the enterprise or the full name of the trader.

**Question 17**

**Decree making detailed provisions for implementation of the commercial law with respect to goods and services in which business is prohibited, restricted and subject to conditions, Appendix III: This appendix lists the current legal instruments. We would like Viet Nam to confirm that all conditions are laid down in the listed instruments, and make this part of the draft report.**

Answer:

We have the understanding that the section on investment would contain no commitment language, but are open to advice as to the WTO justification of this request.

The legal documents listed, as we have explained, may change from time to time. For example, fire protection standards for building material businesses may increase over time. However, they will comply with the international treaties to which Viet Nam is a Member (including the WTO Agreement upon Viet Nam's accession to the WTO).

### Question 18

**Decree making detailed provisions for implementation of the commercial law with respect to international purchases and sales of goods; and agency for sale and purchase, processing and transit of goods involving foreign parties, Appendix 3, list of goods subject to specialised management and the applicable management principles: the description element provides that the Ministry XYZ shall announce the specific conditions. We would like Viet Nam to confirm that "announcing" specific conditions means to publicly lay down the conditions required for imports, exports, and make this part of the draft report.**

Answer:

"Specialised management" referred here is another translation for "line management". This issue has been discussed at some length in different sections of the Draft Report, including some commitment language that has ensured the WTO-consistency of the measures (e.g. paragraphs 209, 210, 214 and 315). As explained therein, line management measures do not match the notion of "conditions required for imports and exports".

### Question 19

**Decree making detailed provisions for implementation of the commercial law with respect to international purchases and sales of goods; and agency for sale and purchase, processing and transit of goods involving foreign parties, Article 3 paragraph 2: this Article stipulates that in addition to complying with the before mentioned Decree, companies need to comply with other relevant laws and undertakings of Viet Nam in international treaties to which it is a member. We do not understand this requirement on business (we would understand this if this provision was directed towards the Vietnamese government). Could Viet Nam please explain and give a concrete example?**

Answer:

The objective of this provision is to make sure that when Viet Nam makes an international undertaking, it will be honoured by all the relevant stakeholders in the country.

### Question 20

**Law on Investment, Article 13, paragraph 2: According to this law an investor has the right to "register business in one or more industries and trades." Could Viet Nam indicate whether such multi-purpose investment requires several investment certificates or whether this can be done under one single certificate?**

Answer:

Multi-purpose investment can be stipulated in one investment certificate. Investors are not required to apply for different investment certificates, unless otherwise provided for by the laws. For example, to register a bank, a separate banking institution shall be set up. Thus, a separate certificate is required.

### Question 21

**Paragraph 34: Could Viet Nam identify the Decree that sets out the registration procedures and criteria for granting licenses for the five non-automatic business licence categories set out in the 2005 Law on Enterprises?**

Answer:

Licensing criteria and procedures for certain business categories mentioned in the Enterprise Law 2005 are stipulated in different specialised legal documents. Please refer also to the Annexes of Decree No. 59/2006/ND-CP dated 12 June 2006 to see the listing of such specialised legal documents.

**Question 22**

**Paragraph 36: Could Viet Nam identify the Decree that sets out the conditional and prohibited business sectors?**

Answer:

Decree No. 59/2006/ND-CP of 12 June 2006 provided for the lists of goods and services in which business is prohibited, restricted and subject to conditions. An English translation of this Decree had been provided to the Working Party prior to the last Working Party Meeting. We would like to resend the lists of goods and services in which business is prohibited, restricted and subject to conditions in the Annex 1 to this document. Please refer also to the answer to Question 1 of this document.

**Question 23**

**Paragraph 39: For the sake of clarity, could Viet Nam submit to the Working Party a list of conditional activities which are regulated by other laws than the investment and enterprise laws, and list of these laws in question (banking and insurance mentioned as examples). This could be done by complementing Table 2. It is noted that banking and insurance are not mentioned in Table 2.**

Answer:

Decree No. 59/2006/ND-CP of 12 June 2006 provided for the lists of goods and services in which business is prohibited, restricted and subject to conditions. An English translation of this Decree had been provided to the Working Party prior to the last Working Party Meeting. We would like to resend the lists of goods and services in which business is prohibited, restricted and subject to conditions in the Annex 1 to this document.

**Question 24**

**When studying the Decree providing detailed provisions of the commercial Law on Representative Offices and Branches of foreign business entities in Viet Nam, we were surprised to see some provisions which we see as unduly restrictive. This is the case in its Articles 22, paragraph 2c) and 23 paragraph 2b) where the head of the representative office is not entitled to concurrently be the representative of an enterprise duly established under the Vietnamese law (Article 22.2c) and where the head of a branch is not entitled to concurrently be the head of the representative office or branch of another foreign business entity in Viet Nam (Article 23.2b). Although we may see that some positions could be conflicting, we see no reason for such a full exclusion of cumulating positions. Could Viet Nam provide the reasons for such exclusive measures?**

Answer:

In this case, such provisions are necessary to avoid conflict of interests. These provisions are not "unduly restrictive" as some foreign businesses have advised Viet Nam to do so to avoid the situation that the heads of foreign entities' representative offices or branches set up their own businesses in

Viet Nam to make use of information and resources that are otherwise only available to the foreign entities.

In addition, as the heads of foreign entities' representative offices represent the foreign entities while the head of branches has no such status, these provisions are also necessary to identify the clear boundaries in terms of the legal status.

- **State Ownership and Privatization**

**Question 25**

**Paragraph 86:** On the question of grandfathering provisions to protect the position of current joint ventures which have a 51 per cent/49 per cent structure, Viet Nam has outlined new requirements with the introduction of the 2005 Enterprise Law. Please include the following language in this paragraph and an appropriate response from Viet Nam.

"A Member sought clarification from Viet Nam as to how it would ensure that joint ventures which have a 51 per cent/49 per cent structure would not be adversely affected by provisions of the Enterprise Law 2005 concerning the requirement of a 65 per cent majority vote requirement for certain decisions. The Member sought clarification as to whether Viet Nam intended to amend the implementing regulations of the Enterprise Law to allow for such joint enterprises to retain pre-existing majority rules. The representative of Viet Nam indicated that..."

Answer:

This issue has been addressed by paragraphs 491, 492 and 52 (which should be moved to right following paragraph 492).

**Question 26**

**Paragraph 83:** As regards the sectors in which foreign investors would be allowed to participate, could Viet Nam identify the Articles in the Investment law where these are mentioned, and also the relevant implementing decree that sets out the maximum percentage of shares foreigners can buy in existing Vietnamese enterprises.

Answer:

The relevant provisions are Article 25 of the 2005 Investment Law. Once Viet Nam's WTO commitments are finalised, Viet Nam will draft the appropriate legal documents guiding the purchase of shares in Vietnamese enterprises by foreign investors.

**IV. POLICIES AFFECTING TRADE IN GOODS**

- **Trading Rights**

**Question 27**

**Paragraphs 139 and 140:** we suggest these be replaced by new paragraphs which reflect the commitment Viet Nam provided at the recent Working Party meeting to provide full trading rights which: (i) are not linked to whether a firm has established investment in Viet Nam; and (ii) are not limited in any way according to the trading activity of the firm or individual.

Answer:

We agree to confirm that, subject to the schedule in Table 8, trading rights are not (i) linked to whether a firm has established an investment in Viet Nam; and (ii) limited to the business lines for which a firm has business registration.

**Question 28**

**Paragraph 140:** we note the commitment language in 140 needs to incorporate the provisions of Table 8 to ensure Viet Nam meets the commitments detailed above. In incorporating the language from Table 8, we recommend the following adjustments/changes:

Replace point 2 with "Not later than 1 January 2006, enterprises with foreign-invested capital, branches of foreign enterprises or foreign enterprises registered as importers of record in Viet Nam, shall be accorded the rights of an importer or exporter of record and shall:

- Be entitled to import and export all goods, including without limitations related in any way to their scope of business activity in Viet Nam, except for those subject to State Trading enterprises (as listed in the attached Table 8(c) and the restrictions listed in the attached Table 8 (a) and 8 (b).
- Register their business lines with the relevant State's registration agencies."
- Adjust Paragraph 3 to read as follows: "The registration procedures for enterprises with foreign-invested capital, branches of foreign enterprises or foreign enterprises registered as importers of record in Viet Nam to engage in import and export activities, shall in no case be made more restrictive than those applied to domestic enterprises and shall not be administered in such a manner to have trade-restricting effects.
- Remove paragraph 4 (as now redundant due to changes in point 2).

Answer:

We agree with the suggestions, except that the date 1 January 2006 - which was probably a typo - should be changed to 1 January 2007.

**Question 29**

**Paragraph 139:** we have not been able to locate specific procedures which would allow for a foreign company to register for the right of importation or exportation. Please include a reference to the relevant decree or administrative provision and allow it to be reviewed by Members.

Answer:

As the commitment is new, Viet Nam has not developed these procedures. Viet Nam will promulgate necessary legal documents to regulate the registration for the right of importation or exportation of branches of foreign enterprises and foreign enterprises registered as importers/exporters of record in Viet Nam by its accession to the WTO.

**Question 30**

**Paragraph 140, "the commitment paragraph"** deals with any enterprise's freedom to select a distributor of its choice for internal distribution of imports. In our view, the content of paragraph 139 should also be drafted in a way that it is understood to represent a commitment

by the Viet Nam Government. We believe that drafting of this latter paragraph should be improved:

- a) "For these reasons his Government confirmed to grant all enterprises with foreign direct investment full trading rights no later than 1 January 2007, i.e. full rights to import any goods regardless of whether or not they were connected with trading lines, except for some products subject to State trading as listed in Table 8c, and requested that the Working Part grant Viet Nam a transition period until 1 January 2009 for the right of foreign-invested enterprises to import certain products as listed in Table 8a and until 1 January 2011 for the right to export rice as listed in Table 8b.";
- b) the rationale and the implications of the following sentence: "He noted that the right to import only required minimal investment in Viet Nam, mainly for administrative purposes." is not clear. It is namely not absolutely clear whether the sentence following the one quoted above ("Decrees on the right to import and export...") also refers to the minimum capital investment requirements. We would request Viet Nam to draft language that confirms that upon accession the conditions, including minimal investment requirements, prevailing for exercising trading rights would be the same for domestic as well as partially or wholly foreign invested enterprises; and
- c) the following part in the sentence starting with "Concerning State-trading, ..." should be deleted (or else amended) as it is an incomplete repetition of preceding information: "..., he confirmed that the goods, listed in Tables 8(a) and 8(b) could be imported and exported by any wholly Vietnamese-invested enterprise, ..."

As for goods listed in Table 8a, we do not understand the rationale for restricting certain pharmaceutical products because they are "essential to human life". Especially, we see no rationale (e.g. lack of institutional capacity to supervise importation) for any distinction between the rights of wholly Vietnamese-invested enterprises and foreign invested enterprises. We therefore ask Viet Nam to eliminate such discrimination upon accession.

Answer:

(a)-(c): We agree to confirm that, subject to the schedule in Table 8, trading rights are not (i) linked to whether a firm has established an investment in Viet Nam; and (ii) limited to the business lines for which a firm has business registration. We think that other revisions as suggested by Members in the previous questions have addressed the issues raised here.

As for pharmaceuticals, it is essential for Viet Nam to have a short transitional period as proposed in order to draft the implementing legal documents and to create supervisory capacity to implement this commitment.

**Question 31**

As for "Viet Nam's proposed text for the Draft Report", we disagree with the formulation under point 6, which makes a linkage between importation and distribution of products. It says: "The trading rights referred herein shall only accord the right to be the importer/exporter of record and, in the case of importation, shall only accord the right to import and sell the imported products to enterprises who have the right to distribute such products in Viet Nam." We request the delegation of Viet Nam to review the language accordingly. However, we can live with sentence that follows the sentence quoted above ("Commitments on trading right shall not, in any case, automatically grant the importer the right to distribute goods in Viet Nam."). The same kind of linkage is made in paragraph 133, where, according to Viet Nam, importation of goods for resale in Viet Nam is a matter related to distribution services. We do not share this view. Importation of goods falls under the GATT



and must be in compliance especially with Articles III and XI GATT. Their subsequent distribution is then a different matter related as a matter of fact to distribution services. We request Viet Nam to review the language accordingly in all relevant paragraphs.

Answer:

We do not try to link trading rights with distribution rights in the above-mentioned sentence. We try to make a clear distinction between them instead because they belong to different set commitments, as defined by the WTO's rules.

As for point 6, the essence of the first sentence is completely consistent with the second sentence. The first sentence aims only to clearly define the extent of the right of the importer of record, as requested by Members of the Working Party.

**Question 32**

**Viet Nam has made the following commitment in its bilateral Agreement on trade in service with us; "The conditions of ownership, operation and scope of activities, as set out in the respective licenses establishing or authorizing the operation or supply of services by an existing foreign service supplier or in relevant Agreements established before the date of accession, shall not be made more restrictive than they exist as of the date of Viet Nam's accession to the WTO."**

**Based on referred above Viet Nam's commitment and the national treatment obligation of Article III of GATT 1994, we would like to seek a commitment from Viet Nam that from the date of accession, any natural or legal person, domestic or foreign, who have already got rights to distribute certain Products made in Viet Nam to Vietnamese market before the date of accession, will also have the right to distribute imported products of the same kind as the products they distribute under the investment licence to Vietnamese market.**

Answer:

Viet Nam confirms that, in accordance with Article III of the GATT, the products imported into Viet Nam shall be accorded treatment no less favourable than that accorded to like products of Viet Nam's origin in respect of all laws, regulations and requirements affecting the internal sale, offering for sale, purchase, transportation, distribution or use.

**A. IMPORT REGULATIONS**

- **Application of internal taxes to imports**

**Question 33**

**Paragraph 189: we note the need for a new commitment in this section to address our specific concerns in relation to the excise tax imposed on spirits. We understand this will be subject to further discussion, but suggest Viet Nam adopt the following type of commitment:**

**"By [date of accession][agreed date], Viet Nam shall amend its current excise tax on spirits to bring it into full conformity with GATT Article III. For distilled spirits of foreign or domestic origin, Viet Nam shall apply a single uniform specific tax based on the actual alcohol content of the product. The tax shall be applied in this manner regardless of the form of packaging."**

Answer:

Viet Nam is discussing with interested Working Party Members to work out a solution to this issue in order to come to the final commitment. We note that this request contains some elements that we do not find in the WTO Agreement.

**Question 34**

**Table 10 indicates that for cigarettes the excise duty rate will be 55 per cent for 2006 and 2007, but will be increased to 65 per cent from 2008. Could Viet Nam confirm that this increase will equally apply to both domestic and imported cigarettes?**

Answer:

We would like to confirm that, according to the amended Excise Tax Law of 2005, excise tax on cigarettes as cited in Table 10 of WT/ACC/SPEC/VNM5/Rev.3 dated 28 June 2006 would be applied equally to both domestic and imported cigarettes.

**Question 35**

**Paragraph 184: 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, or device a rate for sprits of more than 40 per cent alcohol that is less drastic and more proportional than the current sharp increase from 30 per cent to 65 per cent.

Answer:

Viet Nam is discussing with interested Working Party Members to work out a solution to this issue in order to come to the final commitment.

**Question 36**

**As regards the commitment language:**

**We are still discussing the matter of excise tax on spirits with Viet Nam and cannot agree to the commitment language as it currently stands.**

Answer:

We take note of the comment.

- **Tariff rate quotas, tariff exemptions**

**Question 37**

**Paragraph 165: We suggest this be retained as commitment language as it currently is drafted. However, we would also wish to wish to incorporate additional language which would make**

very clear that measures Viet Nam has described in paragraph 162 are not consistent with relevant WTO Articles mentioned in Paragraph 165. We note that Viet Nam had suggested the deletion of this more specific commitment language. We cannot agree to its deletion, as it refers to some specific limitations Viet Nam has applied within the context of application of a TRQ. These limitations are all clearly WTO-inconsistent, and we need it to be very clear that this is the case, as Viet Nam has contested our arguments in paragraph 163.

"The representative of Viet Nam confirmed that from the date of accession, Viet Nam would ...(as per paragraph 165). In particular, the representative of Viet Nam confirmed that from the date of accession, it would: refrain from using auctioning as a method of TRQ allocation and 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:

- (1) We do not see the basis for some elements of this request: for example we have never used auctioning in TRQ allocation and the two methods of TRQ allocation that we proposed and agreed upon by Members do not include auctioning.
- (2) We would like to see WTO justification for each element of this request. We have difficulty understanding why we have committed to be bound by all WTO rules in TRQ allocation, as mentioned in paragraph 165, and are still asked to commit to additional commitment language.
- (3) Viet Nam and all interested Members of the Working Party has signed the bilateral Agreement on TRQs, which clearly stated two methods of TRQ allocation: (i) allocation to end-users; and (ii) allocation by the Government to the designated importers. We see many elements in this request not consistent with these two methods (and therefore are also contrary to the bilateral Agreement that we have signed). For example, "TRQ allocation without reference to the form of business registration" is conflicting with "allocation to end-users". We are not very clear in case there is a conflict between the Goods Schedule (the TRQs part that we have Agreement on) and the text of the Draft Report (that we are discussing now), which one will prevail. We are open to advice on this issue.

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

**Question 38**

**Paragraph 202 and Table 12: According to these sources import prohibition of "specialized encryption machines and encryption software subject to State secret" does not apply to general, commercially traded goods equipped with encryption technology, which are destined for mass consumption. In our view this prohibition is too broad and should be further narrowed down. We would request Viet Nam to delete the part of the sentence in paragraph 202 saying: "...which are destined for mass consumption". We also request Viet Nam to adapt the wording in Table 12 as follows: "this restriction shall not apply to commonly traded goods for commercial purposes equipped with encryption technology".**

Answer:

This text was requested by a Member of the Working Party (and we found it acceptable as it is not contrary to what we have in our system). Therefore, we would appreciate Members of the Working Party to discuss in order to arrive at a unified text.

**Question 39**

**Paragraph 196 and Table 12: We thank Viet Nam for the explanation of the licensing system to be introduced to allow imports of large motorcycles. We note that Table 12 should be amended accordingly, to state that the current import ban will be replaced by the licensing system by 31 May 2007.**

Answer:

Please see the revised Table 12, which is attached as Annex 2 to this document.

**Question 40**

**Paragraph 197 and Table 12: We thank Viet Nam for the explanation of the system to be introduced to allow imports of used motor vehicles. We note that Table 12 should be amended accordingly, to state that the current import ban will be replaced by the system of a three year quota system.**

Answer:

Please see the revised Table 12, which is attached as Annex 2 to this document.

**Question 41**

**Paragraph 214: Large motorcycles should be added to this.**

Answer:

We agree with the suggestion.

- **Customs valuation**

**Question 42**

**WT/ACC/VNM/44/Add.1: The Circular No. 118/2003/TT-BTC mentions in Chapter I "general Provisions", III 1) "Methods of determining tax calculating values" that the method based on deductive values and the method on calculated values shall temporarily not be applied. The Ministry of Finance shall announce these methods once they are applicable.**

**It is suggested to inform the Vietnamese authorities that on the date of Accession the CVA has to be applied in full, this means that all foreseen methods of customs valuation have to be applied.**

Answer:

We would like to confirm that Circular No. 118/2003/TT-BTC is no longer in effect. Decree No. 155/2005/ND-CP and Circular No. 113/2005/TT-BTC dated 15 September 2005 replaced all

former legal documents with regard to customs valuation, including Decree No. 60/2005/ND-CP dated 6 June 2002 and Circular No. 118/2005/TT-BTC dated 8 December 2003. According to these new legal documents, Viet Nam has applied fully all the 6 valuation methods as stipulated in the CVA and this was updated in paragraph 217 of WT/ACC/SPEC/VNM5/Rev.3 dated 28 June 2006.

- **Rules of origin**

**Question 43**

**(Decree No. 19-2006-ND-CP "On Making Detailed Provisions for Implementation of the Commercial Law with respect to Origin of Goods" of 20 February 2006): Article 3.3 describes the scope of application of the Vietnamese non-preferential rules of origin (ROOs). Would Viet Nam please confirm that the list of areas to which non-preferential rules will apply is not exhaustive, and that the same ROOs would also apply to other areas of non-preferential commercial policy instruments?**

Answer:

In accordance with Decree No. 19/2006/ND-CP, Viet Nam applies non-preferential rules of origin (ROOs) to all areas of non-preferential trade policies.

**Question 44**

**Articles 3.5 and 8.2 define change of tariff heading (CTH) as origin conferring criterion and assign it as main criterion for origin determinations. Would Viet Nam please clearly specify whether CTH would have to take place at an HS 4 digit or an HS 6 digit level (heading or sub-heading level). If that depends on the product, from what source would traders see at what level CTH would be required?**

Answer:

Viet Nam is applying CTH criterion (i.e., Change in Tariff Heading - HS 4 digit level), not CTC criterion (Change in Tariff Classification).

**Question 45**

**Article 3.6 and 3.7 define value-added and industrial processes as origin conferring criteria which Article 8.2. identifies as additional methods for origin determinations. Would Viet Nam please identify the sources where the method of calculating the *ad valorem* percentage value is being defined, and which precisely specifies the requisite origin conferring processes.**

Answer:

The *ad valorem*/Value-added criterion and specific manufacturing or processing operation criterion are stipulated in Circular No. 08/2006/TT-BTM dated 14 July 2006 guiding Decree No. 19/2006/ND CP dated 20 February 2006 by the Government.

**Question 46**

**Article 14 establishes that traders can obtain a prior binding origin determination. Would Viet Nam please specify how such prior determinations will be made publicly available, subject of course to the protection of confidential information?**

Answer:

The prior binding origin determination is provided only to its requester because it is made by customs agencies upon the importer's request. Before importing the goods, the importer can request customs agencies to certify the origin of the intended importing goods in advance. This certification will then be delivered to the importer.

**Question 47**

**Article 21 opens the possibility of legal recourse by reference to the "law on complaints and denunciations". Would Viet Nam please confirm that this reference means that the review of an origin determination would be independent of the authority issuing the determination and that it may result in the reversal or modification of the determination.**

Answer:

The origin determination review can be made by the Administrative Court (which is independent of the agency making the origin determination) in accordance with the Law on Complaints and Denunciations (this Law has been amended to be in conformity with WTO's rules).

**Question 48**

**Article 22 provides for entry into force within 15 days after publication in the Official Gazette. From our questions above it would appear that implementing provisions will be required to set out further details. Article 22.3 provides for the adoption of the requisite guidelines and implementation. Would Viet Nam please confirm that such implementing provisions and guidelines be adopted and published prior to the entry into force of the present Decree.**

Answer:

The implementing provisions and guidelines for Decree No. 19/2006/ND-CP include: Circular No. 07/2006/TT-BTM, Circular No. 08/2006/TT-BTM, Circular No. 10/2006/TT-BTM which have all been published and come into force.

**B. EXPORT REGULATIONS**

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

**Question 49**

**Paragraphs 245 and 246: We are still discussing the matter of export duties with Viet Nam and cannot agree to either of the commitment languages proposed.**

Answer:

We look forward to these discussions.

**Question 50**

**As expressed in the consultations on 18 July 2006 and mentioned at the Working Party on 19 July 2006, in relation to the commitment paragraph on export taxes:**

Considering that paragraph 245 does not reflect accurately the current rules on export taxes, only paragraph 246 can be used, with the following necessary amendments.

246. [The Representative of Viet Nam confirmed that Viet Nam would apply export duties, export ~~restrictions~~ *fees and charges* as well as internal regulations and taxes on or in connection with exportation in conformity with the ~~WTO Agreement, in particular Article I~~ of GATT 1994. The Working Party took note of this commitment.

Rationales of the amendments:

1. Remove "restrictions": This reference is misplaced, because this chapter does not refer to export restrictions. Moreover, the following chapter (paragraphs 247-255) is dedicated to export restrictions.
2. Add "fees and charges" in the place of restrictions: The chapter referring to export duties includes also export fees and charges, which are not mentioned in paragraph 245.
3. Remove "WTO Agreement, in particular Article I of the":
  - The only WTO Agreement which refers to issues dealt in this chapter is the GATT 94. Consequently, reference to the "WTO Agreement" is unnecessary; and
  - GATT 94 includes Article I.

Answer:

We thank you for this comment. As members of the Working Party have different views on the issue, we are willing to discuss with all interested members with a view to arriving at a mutually acceptable language.

### C. INTERNAL POLICIES AFFECTING FOREIGN TRADE IN GOODS

- Industrial policy, including subsidies

#### Question 51

**Paragraph 273:** We welcome Viet Nam's commitment to abolish the requirement to export in its export processing zones. We note that the relevant legislation on export processing zones would need to be amended accordingly upon accession. Could Viet Nam identify the relevant legislation, and indicate the timing for the amendment?

Answer:

This commitment has already been implemented. Export performance applied as conditions for licensing and/or granting investment incentives has been abolished pursuant to the Investment Law 2005. The ~~operations of investment activities in~~ export processing zones are also subject to this Law. Therefore, no further legislative actions are required to implement this commitment.

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

**Question 52**

**Document WT/VNM/ACC/44: We would like to have the finalized texts of Law on Standards and Technical Regulations, and 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.**

**Could Viet Nam indicate when the final texts will be available, or are the draft texts submitted to this Working Party the finalized texts?**

Answer:

The Law on Standards and Technical Regulations was approved by Vietnamese National Assembly on 29 June 2006 and declared by Vietnamese President on 12 July 2006. The English translation of this Law will be soon submitted to the WTO Working Party.

Decision No. 50/2006/QD-TTg of 10 March 2006 by Prime Minister, issuing List of products, goods subject to quality inspection, is equally implemented to both domestically produced goods and imports. The English translation of this Decision was submitted to the WTO Working Party and Members prior to the 12th meeting of the WP on 19 July 2006.

**Question 53**

**We have asked where could reference to several Articles of the TBT Agreement be found in the legislation, and have not found them in the texts submitted so far: TBT Article 2.3, TBT Article 2.7, TBT Article 2.8, TBT Article 5.1.1, TBT Articles 5.2.2, 5.2.3, 5.2.4, 5.2.5, 5.2.6, 5.2.7.**

**These Articles are important, so we would ask Viet Nam to identify where in the legislation they are addressed. If they are not yet addressed in the Vietnamese legislation, we would urge Viet Nam to transpose them**

**(These are not addressed in Articles 5, 6 of the draft Law on Standards and Technical Regulations).**

Answer:

These provisions are addressed in Article 6, 35 and 40 of the Law "On Standards and Technical Regulations" as prescribed below:

- Article 2.3 of the TBT Agreement (on the technical regulations review) is mentioned in Article 35 of the Law on Standards and Technical Regulations (upon the request made by organizations and individuals);
- Article 2.7 of the TBT Agreement (on the acceptance of equivalent technical regulations of other WTO Members) is relevant to paragraph 4b, Article 6 of the Law on Standards and Technical Regulations on using international, regional and foreign standards as a basis of technical regulations development. It will be further elaborated in the legal documents guiding the implementation of the Law on Standards and Technical Regulations;
- According to Article 2.8 of the TBT Agreement (wherever appropriate, technical regulations should be based on product requirements in term of performance rather than design or descriptive characteristics) is addressed in clause 4c, Article 6 of the Law Standards and Technical Regulations;



- Article 5.1.1 of the TBT Agreement (requiring non-discrimination in the preparation, adoption and application of conformity assessment procedures) is mentioned in Article 40.3 of the Law on Standards and Technical Regulations;
- Article 5.2.2 of the TBT Agreement (on terms to carry out the conformity assessment procedures) is mentioned in Paragraph 1 of Article 40 of the Law on Standards and Technical Regulations (which provides that all information of procedures, including the processing period of conformity assessment procedure should be transparent and open to applicants);
- Article 5.2.3 of the TBT Agreement (requiring that information is limited as necessary to assess the compliance and costs): the fees and charges are stipulated in Vietnamese Dong and are based on the costs of the services rendered as explained in Paragraph 291 of the Draft Report;
- Article 5.2.4 of the TBT Agreement (requiring the national treatment to deal with the confidentiality of information about products of other Members and domestic products in connection with conformity assessment procedures) is regulated in clauses 2 and 3, Article 40 of the Law on Standards and Technical Regulations;
- Article 5.2.5 of the TBT Agreement (requiring the national treatment on imposing fees of conformity assessment) is regulated in clause 3, Article 40 of the Law on Standards and Technical Regulations. In practice, existing Vietnamese regulations on conformity assessment fees do not discriminate between domestic and foreign products;
- Article 5.2.6 of the TBT Agreement (requiring that the siting of facilities used in conformity assessment procedures and the selection of samples should avoid causing unnecessary inconvenience for applicants) is also stipulated in clause 4, Article 40 of Law on Standards and Technical Regulations (which requests conformity assessment procedures to be harmonized with those of the related international organizations). In fact, for example, according to Decision No. 50/2006/TTg of 7 March 2006 issuing the List of products and goods subject to quality inspection, it is free to select quality inspection bodies among those mentioned in the List as appropriate to the port of entry of the goods into Viet Nam; and
- Article 5.2.7 of the TBT Agreement (requiring that the conformity assessment procedure for modified products should be limited to what is necessary to determine whether product still meets the technical regulations and standards concerned) will be elaborated in the Government decree guiding the implementation of the Law on Standards and Technical Regulations.

As such, the major requirements of the TBT Agreement on technical regulations and conformity assessment procedures have been incorporated into the Law on Standards and Technical Regulations. Certain issues will also be further elaborated in the legal documents guiding the implementation of this Law by the relevant State authorities.

#### **Question 54**

**We would like to repeat our question on Article 3 on the Ordinance of Standardization.**

**Question on the Draft Ordinance on Standardization, Article 3: contains unclear definitions concerning standardization, and includes also technical regulations. Where is conformity assessment addressed?**

**We would like to have clarification as to whether the issues mentioned in the Ordinance of March 2006 have been addressed somewhere else in the legislation. If not, we would urge Viet Nam to transpose them in its legislation.**

Answer:

Definition of standardization including technical regulations in Article 3 of Draft Ordinance on Standardization was not introduced into the Law on Standards and Technical Regulations (according to the decision of the National Assembly).

Pertaining to conformity assessment activities, the Law on Standards and Technical Regulations has one chapter with 18 Articles regulating assessment activities in conformity with standards and technical regulations that include the requirements of the TBT Agreement for these activities such as non-discrimination, not creating unnecessary obstacles to trade, transparency, harmonization with relevant international systems etc.

**Question 55**

We have asked the questions below before. Contrary to what Viet Nam claims, replies to them cannot be found in the new draft of Law on Standards and Technical Regulations. We are therefore repeating our questions:

- **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?**
- **Article 46.3: Who are the "State authorized agencies" mentioned in the text?**

Answer:

This question relates to the Draft Ordinance on Standardization of 17 August 2005.

We would like to answer these questions and how the related issues were addressed in Law on Standards and Technical Regulations of 12 July 2006.

#### Article 4.2

Non-discrimination stipulated in Article 4.2 is applied to subjects specified in Article 2 of the draft Ordinance. In the Law on Standards and Technical Regulations, the principle of non-discrimination to standards and technical regulations is stipulated in Article 6.3 and to conformity assessment procedures is presented in Article 40.3.

#### Article 4.4

Regional standards in this Article are not defined in this Draft Ordinance as well as in Law on Standards and Technical Regulations on 12 July 2006. The reason is that Viet Nam will concentrate on harmonizing national standards mainly with international standards as required by the TBT Agreement instead of with both international and regional standards as before. However, regional and foreign standards harmonized with international ones may also be served as a basis for developing Viet Nam national standards.

#### Article 4.5

Content of this Article is that the sequence of the development of standards, technical regulations and conformity assessment procedures must be transparent so that the related parties could participate and/or make comments.

#### Article 5.3

A stronger commitment is mentioned in Article 8 of the Law on Standards and Technical Regulations.

#### Articles 7.2; 7.3; 7.4

The coordination between ministries as mentioned in these Articles of the Draft Ordinance on Standardization is regulated in provisions on the preparation and application of national standards (Chapter II), of technical regulations (Chapter III) as well as in Chapter IV on responsibilities of agencies, organizations and individuals in the field of standards and technical regulations in the Law on Standards and Technical Regulations on 12 July 2006.

#### Article 11

Please refer to the answer concerning of Article 4.4 above.

#### Article 17

Organization standards (TCCS) in this Article are the internal standards of such organization that are only effective within the organization. These standards are primarily understood as standards of companies or enterprises producing and trading products or goods. However, with the evolution of international standard ISO 9000:2000, the definition is expanded to other bodies such as State administrative agencies, public service organizations etc.

Otherwise, Viet Nam national standards (TCVN) are published by Viet Nam national standardization body. Viet Nam national standardization body is a member of ISO, IEC, CODEX, etc.

#### Article 17.3

As a general rule, organization standards must be in compliance with the relevant technical regulations or other legal documents (if any). In general, standards, including both national standards

and organization standards should be based on international standards. This is prescribed in clause 4b, Article 6 of the Law on Standards and Technical Regulations. In turn, technical regulations should be based on international standards as well. This is also mentioned in the same Article.

#### Article 20.1

Foreign standards are standards promulgated by recognized foreign standardization body. In Viet Nam, some foreign standards (such as ASTM, BS, AS, GS...) are now used as the main basis in preparation of Vietnamese standards.

#### Article 26

The explanation in brackets is the translator's note for the purpose of clarifying who issued the mentioned technical regulations.

At present, making comments on technical regulations is specified in clause 1b and 1c, Article 32 of the Law on Standards and Technical Regulations in which all organizations and individuals could make comments on draft technical regulations.

#### Article 27

All standards specified in this Article are of voluntary application. As national standards are more popular and accessible, they are put at the first row.

#### Article 28.3

The wording of this clause was already the same as in Article 29 of draft Ordinance on Standardization and now in clause 1b, Article 34 of Law on Standards and Technical Regulations.

#### Article 31

Delay may happen between the date of publicity and the date of issuance of the technical regulations. However, internet is now widely used by the State authorities. Therefore, such delay is negligible in comparison with publication of hard copy of technical regulations. Moreover, apart from urgent circumstances, at least 6-month period of between the issuance and enforcement of technical regulations can help reduce the effects caused by such delay (if any).

#### Article 40.3

Registry is to assist the supervision of the State authorities and consumers as well for marketed goods after its declaration. Here, or in other Articles, there is not a discrimination between domestic and foreign enterprises because they both carry out their business in Viet Nam and must be equally responsible for their activities before laws.

#### Article 41.1

The list of these products under Law on Standards and Technical Regulations has not been published. It may be published after 1 January 2007 (the date of effectiveness of the Law).

#### Article 46.3

This Article is related to accreditation activities. The organization mentioned here is the one assigned to carry out accreditation activities.

**Question 56**

Has Viet Nam issued technical regulations on the basis of the framework law? If so, we would be happy if Viet Nam could submit one or two of them to the Working Party so that Members could have an understanding on how the framework law is applied in practice.

**Paragraph 291:** Considering the considerable parts of the TBT Agreement that does not seem to be covered by the Vietnamese legislation, we would submit the following commitment language to this section:

**General commitments on Technical Regulations and standards**

"The representative of Viet Nam confirmed that Viet Nam will comply with all obligations under the WTO Agreement on Technical Barriers to Trade from the date of accession without recourse to any transition period, and would sign and follow the Code of Good Practice for the preparation, adoption and application of standards from the date of its accession to the WTO.

The representative of Viet Nam confirmed that technical regulations, standards and conformity assessment procedures shall be based on international standards where relevant international standards exist.

The representative of Viet Nam further confirmed that it will not maintain technical regulations if the circumstances or objectives giving rise to their adoption no longer exist or if the changed circumstances or objectives can be addressed in a less trade-restrictive manner. From the date of accession, Viet Nam will give positive consideration to accepting as equivalent technical regulations of other WTO Members, even if these regulations differ from its own."

**General commitments on conformity assessment procedures**

"The representative of Viet Nam confirmed that Viet Nam will use relevant guides or recommendations issued by international standardizing bodies as the basis for new conformity assessment procedures in accordance with Article 5.4 of the TBT Agreement. Viet Nam shall accept conformity assessment certificates issued by internationally recognized authorities of the exporting countries, or approvals provided by recognized independent conformity assessment bodies or agencies recognized by the Vietnamese Governmental body. Viet Nam shall reduce further the number of categories of imported products subject to mandatory certification prior to its accession and shall notify the revised list to the WTO by XX – date to be confirmed.

The representative of Viet Nam confirmed that prior to the date of accession, Viet Nam will amend its laws and regulations as to ensure that its conformity assessment procedures reflected options for recognition of technical competence of bodies located in the territory of other WTO members to perform conformity assessment and have their results accepted by Vietnamese authorities. Such options would include: the conclusion of Agreements with conformity assessment bodies in other countries (e.g., accreditation bodies; certification bodies); the acceptance and non-discriminatory consideration of applications for accreditation from conformity assessment bodies located in other WTO members and the acceptance of conformity assessment results from qualifying bodies; and other means of recognition of equivalent procedures.

The representative of Viet Nam confirmed that Viet Nam shall not use standards, technical regulations and conformity assessment procedures in a manner that would be restrictive to international trade, prohibitive of imports, and discriminatory of individual exporters and suppliers. Viet Nam shall use the same standards, technical regulations and conformity

**assessment procedures for imported and domestic goods. It will ensure that as from date of accession, conformity assessment procedures are undertaken and completed as expeditiously as possible, that the information requirements are limited to what is necessary to assess the conformity and determine the fees, that these fees are equitable, that the competent conformity assessment body promptly examines the completeness of the documentation and informs the applicant in a precise and complete manner of all deficiencies, and that the body transmits as soon as possible the results of the assessment. Viet Nam will ensure that the site of facilities used in conformity assessment procedures and the selection of samples are not such as to cause unnecessary inconvenience to applicants. The representative of Viet Nam further confirmed that as of the date of accession, whenever specifications of a product are changed subsequent to the determination of its conformity to the applicable technical regulation or standard, the conformity assessment procedure for this modified product is limited to what is necessary to determine whether adequate confidence exists that the product still meets the technical regulation or standard concerned.**

**The representative of Viet Nam confirmed that Viet Nam will ensure that its technical regulations, standards certification and labelling requirements are not applied to imports in an arbitrary manner, in a way that discriminates between supplier governments where the same conditions apply or as a disguised restriction on international trade. Viet Nam shall make sure that internal mechanisms will exist, upon accession, to inform and consult with, on an ongoing basis, government agencies and ministries (at national and sub-national levels), and private sector interests on the rights and obligations under the GATT 1994 and the TBT Agreement.**

**The representative of Viet Nam confirmed that Viet Nam will, upon request of WTO members, meet to discuss all these measures and their impact on trade with a view to resolving problems. The Working Party took note of these commitments."**

Answer:

We thank for the suggestions but are unable to accept it for the following reasons:

- The text is excessively long and we are unable to understand its full meaning and implications;
- The Law on Standards and Technical Regulations dated 12 July 2006 will come into effect on 1 January 2007. As Viet Nam has explained, the major obligations under the TBT Agreement have been explicitly covered by this Law. In the drafting process, we have used extensively the technical assistance and have taken into accounts the comments by Members of the Working Party in order to ensure the consistency of this Law with WTO's rules. Given that fact, the comment "considering the considerable parts of the TBT Agreement that does not seem to be covered by the Vietnamese legislation", which has been cited as the basis for putting forward the text, is an unfortunate misunderstanding;
- Viet Nam has committed to implement all obligations under the TBT Agreement from the date of accession without recourse to any transition period, as mentioned in paragraph 291 of the Draft Report. Viet Nam has also tried its best to fulfil this commitment by concrete and comprehensive actions, including: setting up and operating the National TBT Notification Authority and Enquiry Point, the TBT Network in ministries and provinces throughout the country, developing and implementing the Action Plan for Implementing the TBT Agreement in Viet Nam between 2006 and 2010; and
- There are some repetitive elements in the suggestions: for example, in paragraph 290 Viet Nam has confirmed that it would accept and implement fully the Code of Good Practice for the Preparation, Adoption and Application of Standards while it is still suggested here in paragraph 291.

- **Sanitary and phytosanitary measures**

**Question 57**

**Paragraph 302:** We have concerns with the application of a two-thirds of expiration date limitation on entry of food products (i.e. food-raw materials and food additives). Such a policy is arbitrary and not justified by international standards. If Viet Nam is going to apply such a restriction, it needs to be justified on clear scientific grounds and supported by appropriate risk analysis studies. The fact that Viet Nam cannot provide a list of product covered by this limitation suggests that it has not undertaken appropriate risk analysis (appropriate to each product subject to the restriction) in setting this limitation. We request that the following language be added to this paragraph (at the end of 302).

A Member noted that it considered the restriction on the entry of some foods products to no more than two-thirds of their expiration date to be arbitrary, non-transparent, and not consistent with relevant international standards. The Member noted that such measures could only be justified if underpinned by scientific principles and on the basis of an appropriate risk analysis in accordance with Article 5 of the SPS Agreement. The Member asked Viet Nam to confirm that its measures in relation to shelf-life were justified. The Representative of Viet Nam confirmed that in relation to shelf-life restrictions or other measures that went beyond the level of protection provided for in appropriate international standards, it would ensure such measures were based on risk assessment in accordance with Article 5 of the SPS Agreement. The Working Party took note of this commitment.

Answer:

As we have explained, this proposed measure only aims to check against trade frauds. It is not intended to cover any food products that can be immediately consumed. In addition, this measure has not been applied in practice since Viet Nam is still in the process of drafting the implementing regulations on these food raw materials and food additives (that is the reason why no complete list of products with HS code is available). Viet Nam can confirm that any implementing regulations concerning food raw materials and food additives shall comply with the SPS Agreement, including Article 5. We can further confirm that for all other food products, Viet Nam will accept voluntary manufacturer-determined best-if-used-by dates.

**Question 58**

**Paragraph 315:** We would like to submit the following commitment language for this section:

"The representative of Viet Nam stated that from the date of accession to the WTO his Government would apply all its sanitary requirements consistently with the requirements of the WTO Agreements on Sanitary and Phytosanitary Measures and Import Licensing Procedures without recourse to any transitional arrangements. He added that Viet Nam would not require additional certification or sanitary registration for products which have been certified as safe for human use and consumption by national competent bodies, and Viet Nam would ensure that from the date of accession its criteria for granting prior authorization or securing the required certification for imported products would be published and available to traders. He confirmed that sanitary and other certification requirements in Viet Nam were administered in a transparent and expeditious manner, and that his Government would be willing to consult with WTO Members concerning the effect of these requirements on their trade with a view to resolving specific problems. The Working Party took note of these commitments."

Answer:

We note that this is a completely new text that is very different from all other texts proposed by Members. Therefore, we would appreciate an opportunity to engage in further discussion to understand this request.

**Question 59**

**Changes and comments proposed:**

**292. The representative of Viet Nam submitted an Action Plan for the implementation of the Agreement on the Application of Sanitary and Phytosanitary Measures in document WT/ACC/VNM/11; the plan has subsequently been revised five times. He noted that Viet Nam was working on the establishment of an SPS regime based on international standards, guidelines and recommendations. Among the main challenges facing Viet Nam were the limited capability of staff to conduct pest risk analysis, the absence of a phytosanitary database. Viet Nam was facing difficulties in performing its own independent risk assessment. His Government was seeking international assistance to address these issues. ~~In principle,~~ Viet Nam applied international standards *in accordance with the SPS Agreement* in the areas where Viet Nam could not conduct its own independent risk assessment.**

**Rationale: If Viet Nam can not make its own risk assessment, then, as prescribed by the SPS Agreement it must necessarily apply the international standards recognized by the SPS Agreement.**

**According to the proposal by Viet Nam, another acceptable proposal could be: "~~In principle,~~ Viet Nam applied international standards *where they exist, particularly* in areas where Viet Nam could not conduct its own independent risk assessment".**

Answer:

We agree with the proposal and accept the changes as follows:

292. The representative of Viet Nam submitted an Action Plan for the implementation of the Agreement on the Application of Sanitary and Phytosanitary Measures in document WT/ACC/VNM/11; the plan has subsequently been revised five times. He noted that Viet Nam was working on the establishment of an SPS regime based on international standards, guidelines and recommendations. Among the main challenges facing Viet Nam were the limited capability of staff to conduct pest risk analysis, the absence of a phytosanitary database. Viet Nam was facing difficulties in performing its own independent risk assessment. His Government was seeking international assistance to address these issues. ~~In principle,~~ Viet Nam applied international standards in accordance with the SPS Agreement in the areas where Viet Nam could not conduct its own independent risk assessment.

**Question 60**

**295. The principal legal framework for sanitary measures was the Veterinary Ordinance enacted on 15 February 1993; Decree No. 93/CP of 27 November 1993 for implementation of the Ordinance; Regulations on animal protection and inspection attached to Decree No. 93/CP; the Regulation on Quarantine Slaughter control and veterinary hygiene inspection of animals and animal-related products; and Decisions Nos. 389 NN-TY/QD and 607 NN-TY/QD providing details of the Ordinance. He added that a revised Veterinary Ordinance had been adopted on 29 April 2004. The Ordinance had entered into force on 1 October 2004 and the Decree guiding**



the implementation of the Ordinance had been promulgated on 25 March 2005 (Decree No. 33/2005/ND-CP). Provisions on inspection and quarantine of imported and exported animals and products of animal origin were provided for in Articles 29 to 37 of the Decree. He added that Decree No. 129/2005/ND-CP on Administrative Infringement in Veterinary Services, Decisions Nos. 45/2005/QD-BNN, 46/2005/QD-BNN, 47/2005/QD-BNN and 48/2005/QD-BNN and Decree No. 129/2005/ND-CP on Administrative Infringement in Veterinary Services provided a detailed legislative framework for veterinary hygiene and food safety inspection procedures for veterinary drugs and vaccines. Fees charged for veterinary services, including the cost for additional quarantine, testing and/or destruction of animals, were regulated by Decision No. 08/2005/QD-BTC. He added that Viet Nam was revising its food safety inspection procedures for production and commercialization of fishery products and developing approval and veterinary hygiene and food safety inspection procedures for aquatic animals and products thereof (see paragraph [361]) and that regulations on treatment of infected animals and animal products were expected to be issued in 2006.

Answer:

We would like to correct some information in this paragraph as follows:

295. The principal legal framework for sanitary measures was the Veterinary Ordinance enacted on 15 February 1993; Decree No. 93/CP of 27 November 1993 for implementation of the Ordinance; Regulations on animal protection and inspection attached to Decree No. 93/CP; the Regulation on Quarantine Slaughter control and veterinary hygiene inspection of animals and animal-related products; and Decisions Nos. 389 NN-TY/QD and 607 NN-TY/QD providing details of the Ordinance. He added that a revised Veterinary Ordinance had been adopted on 29 April 2004. The Ordinance had entered into force on 1 October 2004 and the Decree guiding the implementation of the Ordinance had been promulgated on ~~25~~ 15 March ~~2005~~ 2004 (Decree No. 33/2005/ND-CP). Provisions on inspection and quarantine of imported and exported animals and products of animal origin were provided for in Articles 29 to 37 of the Decree. He added that Decree No. 129/2005/ND-CP on Administrative Infringement in Veterinary Services, Decisions Nos. 45/2005/QD-BNN, 46/2005/QD BNN, 47/2005/QD-BNN, ~~and~~ 48/2005/QD BNN, and Decree No. 129/2005/ND-CP on Administrative Infringement in Veterinary Services provided a detailed legislative framework for veterinary hygiene and food safety inspection procedures, **registration and inspection procedures** for veterinary drugs and vaccines. Fees charged for veterinary services, including the cost for additional quarantine, testing and/or destruction of animals, were regulated by Decision No. 08/2005/QD-BTC. He added that Viet Nam was revising its food safety inspection procedures for production and commercialization of fishery products and developing approval and veterinary hygiene and food safety inspection procedures for aquatic animals and products thereof (see paragraph [361]) and that regulations on treatment of infected animals and animal products were expected to be issued in 2006.

**Question 61**

**Changes and comments proposed:**

298. He further noted that Viet Nam was participating actively in the regional standard harmonization arrangements such as ASEAN, APEC and ASEM and was developing standards harmonized with international standards. In response to questions about the ASEAN harmonization framework, he said that ASEAN members were developing a harmonization framework for phytosanitary procedures comprising ten agricultural products at the outset and applicable to ASEAN members only. Work on a phytosanitary certification management system had been completed. So far, ASEAN countries had concentrated mainly on exchanging legal normative documents, results of scientific studies relating to the phytosanitary area, and

developed a pest list on some major crops for conducting risk assessment. He confirmed that the ASEAN harmonization framework was in line with the rules of the WTO SPS Agreement. *Some members noted, and Viet Nam acknowledged it, that only Codex Alimentarius Commission, International Animal Health Organization (OIE) and International Plant Protection Convention (IPPC) have been recognized by the Agreement on Sanitary and Phytosanitary Measures as international standard setting bodies.*

**Rationale:** Since some international organizations have been mentioned which are not recognized by the SPS Agreement, it must be clarified that only Codex Alimentarius Commission, International Animal Health Organization (OIE) and International Plant Protection Convention (IPPC) have been recognized as standard setting bodies. Moreover, not all WTO members are members of ASEM, APEC, ASEAN.

Answer:

We agree with the proposals and accept the changes as follows:

298. He further noted that Viet Nam was participating actively in the regional standard harmonization arrangements such as ASEAN, APEC and ASEM and was developing standards harmonized with international standards. In response to questions about the ASEAN harmonization framework, he said that ASEAN members were developing a harmonization framework for phytosanitary procedures comprising ten agricultural products at the outset and applicable to ASEAN members only. Work on a phytosanitary certification management system had been completed. So far, ASEAN countries had concentrated mainly on exchanging legal normative documents, results of scientific studies relating to the phytosanitary area, and developed a pest list on some major crops for conducting risk assessment. He confirmed that the ASEAN harmonization framework was in line with the rules of the WTO SPS Agreement. Some members noted, and Viet Nam acknowledged it, that only Codex Alimentarius Commission, International Animal Health Organization (OIE) and International Plant Protection Convention (IPPC) have been recognized by the Agreement on Sanitary and Phytosanitary Measures as international standard setting bodies.

## **Question 62**

**Changes and comments proposed:**

300. Asked specifically about Viet Nam's current SPS requirements for the importation of meat and poultry, live plants, horticultural products and grain, as well as technical requirements for the certification, labelling, and packaging of food products, the representative of Viet Nam said that Viet Nam's requirements for imported meat were **generally** based on the Recommendations of the OIE, the regulations of CODEX, *where they exist* and Agreements between Viet Nam and exporting countries. Poultry meat importers were required to obtain a sanitary certificate issued by the National Veterinary Authority of the exporting country, certifying that (i) the exporting country *or region* was free from Avian influenza.

Chapter 2.7.12 of the "Code for Land Animals" of OIE admits the possibility of declaring a country, zone or compartment as free from avian flu. For that reason, Viet Nam should adjust their legislation to that.

(ii) the meat originated from healthy poultry in disease free zones, (iii) the poultry had been examined ante-mortem and post-mortem and found free from clinical signs of animal infectious disease, and (iv) met all veterinary hygiene standards and were free from harmful micro-organisms. He confirmed that the ante-mortem and post-mortem examinations were also applicable in Viet Nam and that meat requirements were generally based on OIE standards. In

the remaining cases, Viet Nam's standards were not stricter than internationally established standards. Plants imported for consumption, including grains, were required to be free from plant quarantine pests of Viet Nam and be accompanied by a Phytosanitary Certificate of the exporting country. Live plants imported for propagation or planting should have a quarantine permit issued by the competent Vietnamese authority, a Phytosanitary Certificate of the exporting country, and be free from plant quarantine pests. As for technical requirements for the certification of food products, Viet Nam applied certification procedures based on national and international standards, and certified the quality management system based on ISO 9000, Good Manufacturing Practices (GMP) and Hazard Analysis and Critical Control Point (HACCP) for food producing units. Labelling and packaging of food products was regulated according to the Prime Minister's Decision No. 178/1999/QD-TTg of 30 August 1999, Circular No. 34/1999/TT-BTM of 15 December 1999 guiding the implementation of the Decision, and Circular No. 15/2000/TT-BYT of 30 June 2000.

Answer:

We agree with the proposals and accept the changes as follows:

300. Asked specifically about Viet Nam's current SPS requirements for the importation of meat and poultry, live plants, horticultural products and grain, as well as technical requirements for the certification, labelling, and packaging of food products, the representative of Viet Nam said that Viet Nam's requirements for imported meat were generally based on the Recommendations of the OIE, the regulations of CODEX, **where they exist** and Agreements between Viet Nam and exporting countries. Poultry meat importers were required to obtain a sanitary certificate issued by the National Veterinary Authority of the exporting country, certifying that (i) the exporting country **or region** was free from Avian influenza, (ii) the meat originated from healthy poultry slaughtered in disease free zones, (iii) the poultry had been examined ante-mortem and post-mortem and found free from clinical signs of animal infectious disease, and (iv) met all veterinary hygiene standards and were free from harmful micro-organisms. He confirmed that the ante-mortem and post-mortem examinations were also applicable in Viet Nam and that meat requirements were generally based on OIE standards. In the remaining cases, Viet Nam's standards were not stricter than internationally established standards. Plants imported for consumption, including grains, were required to be free from plant quarantine pests of Viet Nam and be accompanied by a Phytosanitary Certificate of the exporting country. Live plants imported for propagation or planting should have a quarantine permit issued by the competent Vietnamese authority, a Phytosanitary Certificate of the exporting country, and be free from plant quarantine pests. As for technical requirements for the certification of food products, Viet Nam applied certification procedures based on national and international standards, and certified the quality management system based on ISO 9000, Good Manufacturing Practices (GMP) and Hazard Analysis and Critical Control Point (HACCP) for food producing units. Labelling and packaging of food products was regulated according to the Prime Minister's Decision No. 178/1999/QD-TTg of 30 August 1999, Circular No. 34/1999/TT-BTM of 15 December 1999 guiding the implementation of the Decision, and Circular No. 15/2000/TT-BYT of 30 June 2000.

**Question 63**

**Changes and comments proposed:**

**303. ~~The representative of Viet Nam further noted that the recognition of different measures from other countries to ensure an equivalent level of protection was difficult as developed countries applied higher and stricter measures of hygiene, and plant and animal quarantine than Viet Nam could afford.~~** Asked to describe the process in place to enable the recognition of measures, he said that Viet Nam required other countries to ~~announce a complete list of~~ *identify the relevant SPS measures including an indication of what these measures were based upon*, to

allow the Vietnamese authorities to evaluate them ~~measures~~ *in accordance with the Decision on Equivalence (G/SPS/19/Rev.2)*". On-site investigations were conducted in the countries if necessary to check the implementation of the measures. Viet Nam had signed a number of bilateral Agreements on food hygiene and safety, and sanitary and phytosanitary measures with other countries. As per November 2005, Viet Nam had Agreements and Memoranda of understanding on plant protection and quarantine co-operation with 11 countries and Agreements and Memoranda of understanding on animal health and quarantine with 13 countries. SPS Agreements and Memoranda of understanding had also been signed with Canada, China, the Republic of Korea, and Thailand, as well as a Mutual Recognition Agreement on fishery with the EC. Viet Nam expected to sign an Agreement on mutual recognition regarding processed food with ASEAN countries and bilateral Agreements on food safety with Lao PDR and Cambodia in 2007. He added that Viet Nam intended to develop more concrete equivalent recognition procedures for SPS measures. His Government was seeking technical assistance to address this issue.

#### Rationale:

1. The first sentence misses the point because the idea on equivalence is not to copy or internally implement measures from other exporting countries, but to recognize them (if they are "equivalent" to achieve the adequate level of protection of Viet Nam).
2. The second sentence has to be corrected, because there is no need to request the "complete list" of measures. It may be sufficient or a specific measure or measures related to a certain product or categories of products, as provided for in the equivalence Decision.

#### Answer:

We agree with the proposals, with some changes as follows:

303. ~~The representative of Viet Nam further noted that the recognition of different measures from other countries to ensure an equivalent level of protection was difficult as developed countries applied higher and stricter measures of hygiene, and plant and animal quarantine than Viet Nam could afford. Asked to describe the process in place to enable the recognition of measures, he said that Viet Nam required other countries to announce a complete list of~~ **identify the relevant SPS measures in details including references for their setting up** ~~including an indication of what these measures were based upon, to allow the Vietnamese authorities to evaluate them~~ *measures in accordance with the Decision on Equivalence (G/SPS/19/Rev.2)*. On-site investigations were conducted in the countries if necessary to check the implementation of the measures. Viet Nam had signed a number of bilateral Agreements on food hygiene and safety, and sanitary and phytosanitary measures with other countries. As per November 2005, Viet Nam had Agreements and Memoranda of understanding on plant protection and quarantine co-operation with 11 countries and Agreements and Memoranda of understanding on animal health and quarantine with 13 countries. SPS Agreements and Memoranda of understanding had also been signed with Canada, China, the Republic of Korea, and Thailand, as well as a Mutual Recognition Agreement on fishery with the EC. Viet Nam expected to sign an Agreement on mutual recognition regarding processed food with ASEAN countries and bilateral Agreements on food safety with Lao PDR and Cambodia in 2007. He added that Viet Nam intended to develop more concrete equivalent recognition procedures for SPS measures. His Government was seeking technical assistance to address this issue.

#### Question 64

#### Changes and comments proposed:

**305. Some Members requested Viet Nam to detail how it would act when international standards did not exist or the level of protection of an international standard did not meet Viet Nam's appropriate level of protection, as the Agreement stipulated that Viet Nam would need to undertake a risk analysis to validate each measure (Article 5.1), or determine that insufficient scientific evidence would only justify the application of a provisional measure (Article 5.7). Viet Nam was invited to develop a process for approving scientifically justified measures stricter than international norms. A Member noted that WTO provisions did not require WTO Members to conduct their own risk assessment; when technically viable, they could use those conducted by other Members or international organizations. Viet Nam was asked to revise its Action Plan to include Article 5.7 considerations.**

**Rationale:** There is no need to mention this, because it has been superseded.

Answer:

We agree with the proposals and accept the changes as follows:

305. Some Members requested Viet Nam to detail how it would act when international standards did not exist or the level of protection of an international standard did not meet Viet Nam's appropriate level of protection, as the Agreement stipulated that Viet Nam would need to undertake a risk analysis to validate each measure (Article 5.1), or determine that insufficient scientific evidence would only justify the application of a provisional measure (Article 5.7). Viet Nam was invited to develop a process for approving scientifically justified measures stricter than international norms. A Member noted that WTO provisions did not require WTO Members to conduct their own risk assessment; when technically viable, they could use those conducted by other Members or international organizations. Viet Nam was asked to revise its Action Plan to include Article 5.7 considerations.

#### **Question 65**

**Changes and comments proposed:**

**306. The representative of Viet Nam replied that Viet Nam's SPS standards were based on CODEX, IPPC and OIE standards, but had a generally lower level of protection in order to adapt to the production conditions in Viet Nam. Should CODEX, IPPC and OIE standards not be available, Viet Nam would adopt the standards of regional or developed countries, or as a last resort, national standards would be applied to the extent that these were consistent with the SPS Agreement. In the event of non-existent or insufficient international standards, Viet Nam would undertake its own risk assessment to meet its appropriate level of protection or consult the regulations of WTO Members, in particular those having trade relations with Viet Nam, and seek technical assistance to develop appropriate measures in accordance with Paragraphs 1 and the second sentence of paragraph 7 of Article 5 of the SPS Agreement.**

**Comment:** it is hard to envision the need to apply for technical assistance in order to adopt some precautionary measure, due to the nature of such measures. However, once such precautionary measure is adopted, assistance could be necessary in order to search for additional information that allows authorities to perform risk assessment.

Answer:

We agree with the proposals, with some changes as follows:

306. The representative of Viet Nam replied that Viet Nam's SPS standards were based on CODEX, IPPC and OIE standards, but had a generally lower level of protection in order to adapt to the production conditions in Viet Nam. Should CODEX, IPPC and OIE standards not be available, Viet Nam would adopt the standards of regional or developed countries, or as a last resort, national standards would be applied to the extent that these were consistent with the SPS Agreement. In the event of non-existent or insufficient international standards, Viet Nam would undertake its own risk assessment to meet its appropriate level of protection or consult the regulations of WTO Members, in particular those having trade relations with Viet Nam, and seek technical assistance to develop appropriate measures in accordance with Paragraphs 1 and ~~the second sentence of~~ **paragraph 7** of Article 5 of the SPS Agreement.

### Question 66

#### Changes and comments proposed:

**312. Important notice: Definition of drafting on this paragraph in this chapter depends on the new regulation of Viet Nam (Decree on Labelling).**

~~A Member was concerned that Viet Nam required compulsory food labelling for all genetically modified products. This Member asked Viet Nam to clarify whether its regulatory framework provided for differential treatment with regard to approval of GMOs to be released into the environment in Viet Nam, as opposed to GMOs brought into the country for food, feed and/or processing and enquired about implementation of the National Biosecurity Framework. Viet Nam was also invited to describe the scope of its new mandatory labelling requirement. In response, the representative of Viet Nam noted that this was a relatively new subject in Viet Nam and that no national standards for GMO products had been developed yet. Viet Nam's capacity to assess the impact of GMO products was still limited. Labelling of GMO products was subject to the same regulations as other products, i.e. Decision No. 178/1999/QĐ-TTg of 30 August 1999 on the importation, exportation and domestic circulation of goods, Decision of the Ministry of Health No. 4196/QĐ-BYT of 31 August 2000, and Circular No. 15/2000/TT-BYT of 30 June 2000 providing guidelines for the labelling of foodstuff. Thus, t~~

*The circulation of GMO products in the Vietnamese market was permitted, without mandatory labelling on GMO products regarding the GM origin of the product. As labelling only aimed at providing general information to the consumers, – He noted that Decision No. 178 has been would be repealed by the a-Government Decree (identify it here), which would included general labelling provisions consistent with international practice and based on scientific evidence. A Member reminded Viet Nam that any standards relating to GMOs would have to be in conformity with WTO rules and jurisprudence in this area. The representative of Viet Nam confirmed that Viet Nam would apply the SPS Agreement, including rules and jurisprudence that may be applicable to the treatment of GMOs, from the date of accession.*

#### Answer:

We would prefer to delete this paragraph as it is irrelevant here. In case Members find it necessary to have a text on this issue, we would like to propose the following:

312. The representative of Viet Nam confirmed that, while preserving Viet Nam's right to protect human, animal or plant life or health in its territory in accordance with the WTO Agreement, the current legal system of Viet Nam did not prohibit the circulation of GMO products in the Vietnamese market. Viet Nam would continue to have a policy that was science-based, transparent, and predictable, and would continue to establish procedures related to this policy based on modern risk

assessment principles and guidelines, including those of the WTO SPS and TBT Agreements, Codex Alimentarius Commission and the International Plant Protection Convention.

#### Question 67

**315. {The representative of Viet Nam confirmed that Viet Nam would ~~amend its laws and rescind any existing SPS measures that did not comply with the SPS Agreement requirements prior to its accession~~ [apply the Agreement on the Application of Sanitary and Phytosanitary Measures from the date of accession without recourse to any transition period]. He further confirmed that SPS measures applied under the purview of line management would be subject to all relevant disciplines of the SPS Agreement. The Working Party took note of these commitments.}**

Answer:

We agree with the proposals and accept the changes as follows:

315. {The representative of Viet Nam confirmed that Viet Nam would ~~amend its laws and rescind any existing SPS measures that did not comply with the SPS Agreement requirements prior to its accession~~ [apply the Agreement on the Application of Sanitary and Phytosanitary Measures from the date of accession without recourse to any transition period]. He further confirmed that SPS measures applied under the purview of line management would be subject to all relevant disciplines of the SPS Agreement. The Working Party took note of these commitments.}

- **Free zones, special economic areas**

#### Question 68

**Paragraph 325: We welcome Viet Nam's commitment to abolish the requirement to export in its export processing zones. We note that the relevant legislation on export processing zones would need to be amended accordingly upon accession. Could Viet Nam identify the relevant legislation, and indicate the timetable for the amendment?**

Answer:

This commitment has already been implemented. Export performance applied as conditions for licensing and/or granting investment incentives has been abolished pursuant to the Investment Law 2005. The ~~operations of investment activities in~~ export processing zones are also subject to this Law. Therefore, no further legislative actions are required to implement this commitment.

#### Question 69

**Paragraph 326: We would like to add the following to the commitment language for this section:**

**"The representative of Viet Nam confirmed that enterprises in export processing zones are not required to export their products".**

Answer:

We can confirm that export performance applied as conditions for licensing and/or granting investment incentives has already been abolished pursuant to the Investment Law 2005. The ~~operations of investment activities in~~ export processing zones are also subject to this Law.

If this confirmation is still not acceptable, we can agree to the following language: "The representative of Viet Nam confirmed that, notwithstanding Viet Nam's commitments with respect to export subsidies, enterprises in export processing zones are not required to export their products."

- **Core labour standards**

#### **Question 70**

**Paragraphs 368-369: We are in favour of maintaining this section.**

#### Answer:

We note that this section does not appear in the Draft Report of the Working Party of other newly acceded Members. We share the view, which has been supported by some Working Party Members, that this section be deleted.

### **V. TRADE-RELATED INTELLECTUAL PROPERTY REGIME**

- **GENERAL**
- **Copyright and related rights**

#### **Question 71**

**Limitations and Exceptions for Copyright Protection (points 389 and 390 of the Working Party Report): Certain limitations and exceptions to copyright protection set out in the IP Law appear to be wider than allowed under Article 13 TRIPS. It is not clear how some of these exceptions will avoid "... conflict with a normal exploitation of the work..." and "... not unreasonably prejudice the legitimate interests of the right holder". Any limitations and exceptions under Articles 25, 26, 32, and 33 of the IP Law should be clearly conditioned to such conditions.**

#### Answer:

The IP Law prescribes copyright in Articles 19, 20 and rights of related rights holder in Articles 29, 30, and 31. Besides, the IP Law also prescribes limitations and exceptions of copyright protection and related rights in provisions of Articles 25, 26, 32, and 33. However, to prevent misuses of these limitations and exceptions, the IP Law also sets out regulations (in provision 2 of Articles 25, 26, 32, and 33) that "... conflict with a normal exploitation of the work..." and "...not unreasonably prejudice the legitimate interests of the right holder, copyright and related right holder..." for deterring purposes. These regulations are in conformity with Berne Convention (Provision 2, Article 9) and TRIPS Agreement (Article 13).

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

#### **Question 72**

**Ownership of GIs (point 412 of the Working Party Report): Do Articles 22 (implying ownership of GIs by the Vietnamese state) and 32.2 and 37.7 (implying the intervention of various technical ministries and local authorities in the examination of new applications for GI registration) of the "Decree Making detailed provisions and providing guidelines for implementing the provisions of the Intellectual Property Law concerning industrial property"**



**apply to geographical indications of a country other than Viet Nam (i.e., referring to a territory of production outside Viet Nam)?**

Answer:

Article 22 of the draft Decree making detailed provisions and providing guidelines for implementing certain Articles of the Intellectual Property Law concerning industrial property provides for guidance to the exercise of State ownership of geographical indications under Article 214.4 of the Intellectual Property Law. Therefore, this Article is only applicable to the Vietnamese geographical indications. For foreign geographical indications, any entity having the rights to own, manage and use a geographical indication in its country of origin pursuant to the law of such country will have the same rights in Viet Nam if such geographical indication is registered in Viet Nam. The purpose of Article 32 of the Draft Decree making detailed provisions and providing guidelines for implementing certain Articles of the Intellectual Property Law concerning industrial property is to clarify intellectual property - related responsibilities of ministries and localities under their management scope. Article 32.7 does not imply the intervention of local authorities in examination of new application for geographical indication registration, but just provides for responsibilities of local authorities in the processes of preparing application dossier, filling application (for registration) and organizing the management of geographical indications belonging to their own localities.

#### **Question 73**

**Consumer deception (point 411 of the Working Party Report): Does Article 21.3 (which would appear to require proof of consumer deception in usurpations of GIs) of the "Decree Making detailed provisions and providing guidelines for implementation of certain Articles of the Law on Intellectual Property regarding Protection of Intellectual Property Rights" derogate in any way the protection provided under Article 129.3.(d) of the IPR law that entered into force on 1 July 2006 (which, in line with Article 23 of the TRIPS Agreement, does not require such proof)?**

Answer:

Viet Nam appreciates this suggestion and will introduce it into the draft Decree making detailed provisions and providing guidelines for implementing certain Articles of the Intellectual Property Law concerning intellectual property enforcement in a manner that would re-affirm the special protection for wine and spirits provided for in Article 129.3(d) of the Intellectual Property Law.

#### **Question 74**

**Data Protection: Clarification of Data Protection terms (point 432 of the Working Party Report): Although the IP Law provides for data protection, we are concerned that the implementing "guidelines" have not yet been drafted.**

Answer:

The draft Decree detailing and guiding the implementation of certain Articles of the Intellectual Property Law concerning industrial property includes provisions on responsibilities of ministries and localities concerning data protection. Article 32.3 of the draft Decree stipulates that the Ministry of Health, the Ministry of Agriculture and Rural Development are responsible for taking lead, in cooperation with the Ministry of Science and Technology, in guiding the implementation of provisions on test data protection as part of procedures of registration for marketing medicines, vaccinations and agricultural chemicals.

- **ENFORCEMENT**

**Question 75**

**IPR Enforcement: Penalties Must Be Deterrent (point 450 of the Working Party Report): In administrative enforcement cases, infringing goods appear to be valued and penalties imposed based on the value of the infringing goods rather than the market price of the genuine goods. (Article 214.4 of the IP Law and Article 35.2 of the enforcement decree implementing the law.) We are concerned that determining penalties based on the value of the infringing goods does not adequately reflect the harm to the right holder and will not create a deterrent to further infringements. Penalties should be based on the value of the genuine good.**

Answer:

In the Vietnamese intellectual property enforcement system, along with civil procedures (for recovering the legitimate interests of the right holders) and criminal procedures (for punishing IPR infringing acts of criminal nature), the administrative procedures are also used in combination with the other two recourses to protect consumers and society through prompt and effective measures against intellectual property infringing acts (provided for in Article 211 of the 2005 Intellectual Property Law). These are deterrent and punitive remedies which eradicate the infringer's motives and the material conditions for repeating such offences. Therefore, administrative remedies are applied mainly to revoke the illegal incomes and the implements of these infringers, meanwhile punishing them based on these grounds rather than the damage level of a specific right holder -- which is typical feature of the civil procedures.

Legislation in Viet Nam has been drafted in accordance with this internationally recognized principle.

Pursuant to Article 214 of the IP Law 2005, monetary fine is just one of the administrative remedies applicable to the IPR infringers. Apart from monetary fine, the IPR infringer would also be subject to one or several other supplementary remedies, including: (i) confiscation of intellectual property counterfeit goods, materials, raw materials and implements mainly used for manufacturing or trading such intellectual property counterfeit goods (Article 214.2.a); (ii) suspension of relevant business activities for a definite term; and (iii) compelling destruction, distribution or use of the intellectual property counterfeit goods for non-commercial purposes, compelling delivery of the transiting goods out of the territory of Viet Nam or compelling re-export of the intellectual property counterfeit goods after having removed infringing elements (Article 214.3).

Furthermore, besides the aforesaid administrative remedies, the IPR infringer would still be subject to a court judgment for the damages caused by the same infringing act (Articles 198.1.b and d of the Intellectual Property Law 2005).

Therefore, in our view, the combination of the above-mentioned remedies is sufficient to provide a deterrent punishment on IPR infringers.

**Question 76**

**Seizure and Destruction Authority: The authority to both seize and destroy pirated and counterfeit goods is not explicitly provided for criminal, civil, administrative or border enforcement. The authority to both seize and destroy infringing goods should be described explicitly.**

Answer:

The seizure of property as provided for in Article 156 of the 1999 Criminal Code on the crimes of producing and/or trading in counterfeit goods is also applicable to intellectual property counterfeit goods prescribed in Article 213 of the Intellectual Property Law. In addition, Article 76 of the 2003 Criminal Procedures Code also provides for seizure, confiscation or destruction of material evidence which are tools, means of crime or circulation prohibited objects; seizure and destruction of material evidence which are unvalued or unusable. If it is of the view of some Members that more explicit rules are needed, we are willing to work with these Members to elaborate the above-mentioned provisions in more detail in the Viet Nam's legal system.

The seizure and destruction of infringing goods in the administrative enforcement of intellectual property right are provided for in Articles 214.3 and 215.2.b of the Intellectual Property Law. During implementation of border control measures with regard to intellectual property, the Customs also has the right to apply the above-mentioned seizure and destruction measures with regard to intellectual property counterfeit goods (pirated goods and counterfeit trademark goods, counterfeit GI goods) in accordance with Article 216.4 of the Intellectual Property Law. The measure of compelled destruction of infringing goods in civil enforcement of intellectual property rights are provided for in Article 202.5 of the Intellectual Property Law.

**Question 77**

**Commitment language: We will provide commitment language on IPR enforcement at a later stage.**

Answer:

We look forward to receiving this commitment language in the near future.

**VI. POLICIES AFFECTING TRADE IN SERVICES**

**Question 78**

**We would like to seek the reasons for the changes of description from paragraph 458 of WT/ACC/SPEC/VNM/5/Rev.2 to paragraph 468 of document WT/ACC/SPECNMM/5/Rev.3, indicated below.**

**WT/ACC/SPEC/VNM/5/Rev.2:**

**458. Concerning professional services, he said that the requirements for establishment, operation, rights and obligations of legal professionals practising in Viet Nam were specified in Decree No. 87/2003/ND-CP of 22 July 2003. Pursuant to this Decree, *foreign lawyers and foreign lawyer organizations could practice in Viet Nam in the form of a branch of a foreign lawyer organization, a foreign law firm, or a foreign-Vietnamese law partnership. To work as a lawyer in Viet Nam, foreigners were required to hold a practising certificate issued by a competent foreign agency or organization, show goodwill towards the state of Viet Nam, and be employed by a foreign law practice or a Vietnamese lawyer organization. Pursuant to Government Decree No. 92/1998/ND-CP of 10 November 1998 on legal consultancy of foreign lawyers in Viet Nam, minimum five years of experience in legal consultancy was required for the heads of foreign law firm branches in Viet Nam. The experience could be obtained in any country. Foreign lawyers in Viet Nam were not allowed to advise on Vietnamese laws, and were only permitted to advise on foreign and international law in the areas of business, investment, and commerce. Foreign law firms could enter into legal consulting cooperation contracts with Vietnamese legal services***

*suppliers to receive advice on Vietnamese laws. Foreign auditing firms could operate in Viet Nam in the form of a joint-venture with a Vietnamese auditing firm. Wholly foreign-owned auditing firms had to be licensed as provided for in the Foreign Investment Law and other related legal acts. Advertising was a new activity in Viet Nam, and the market would be liberalized gradually.*

WT/ACC/SPEC/VNM/5/Rev.3:

468. Concerning professional services, he said that the requirements for establishment, operation, 'rights and obligations of legal professionals practising in Viet Nam were specified in Decree No. 87/2003/ND-CP of 22 July 2003. Pursuant to this Decree, foreign lawyer organizations could practice in Viet Nam in the form of a branch of a foreign lawyer organization, a foreign law firm, or a foreign-Vietnamese law partnership; *foreign lawyers could practice foreign and international law as members or employees of Vietnam-based foreign lawyers' law-practicing organizations, or as employees of Vietnamese lawyer offices or Vietnamese law partnerships.* To work as a lawyer in Viet Nam, foreigners were required to hold a valid practising certificate issued by a competent foreign agency or organization, show goodwill towards the state of Viet Nam, and be employed by a Viet Nam-based foreign lawyer organization or a Vietnamese lawyer organization. Foreign auditing firms could operate in Viet Nam in the form of a joint-venture with a Vietnamese auditing firm. Wholly foreign-owned auditing firms had to be licensed as provided for in the Foreign Investment Law and other related legal acts. Advertising was a new activity in Viet Nam, and the market would be liberalized gradually.

Answer:

In 2003, Viet Nam promulgated Decree No. 87/2003/ND-CP dated 22 July 2003 on legal practice of foreign lawyers and foreign lawyer organizations in Viet Nam in replacement of Decree No. 92/1998/ND-CP dated 10 November 1998 on legal consulting practice of foreign lawyers and foreign lawyer organizations in Viet Nam. Thus, paragraph 468 in WT/ACC/SPEC/VNM/5/Rev.3 cannot be revised as it has reflected Viet Nam's legal status concerning legal services at that time. If some Members of the Working Party are not comfortable with such language, we can agree to the deletion of all the references to the old legal documents and their description.

#### Question 79

**Paragraph 477 –we welcome this commitment language. We note that "foreign banks operating in Viet Nam were granted full MFN and national treatment in the placement and operation of ATMs." We ask if Viet Nam can indicate the Decree (Decree No. 22?) or other relevant administrative instrument that gives rise to this commitment. If Viet Nam intends to amend Decree No. 22 or another Decree to meet this commitment, could it indicate so in this section?**

Answer:

Viet Nam would like to reaffirm that the provisions of Decree No. 22/2006/NĐ-CP issued on 28 February 2006 on Organization and Operation of Foreign Bank Branches, Joint-venture Banks, 100 per cent Foreign-Owned Banks and Representative Offices of Foreign Credit Institutions in Viet Nam are not contrary to the commitment language in paragraph 477. In our opinion, commitment language in paragraph 477 is clear, which is consolidated on the basis of the final results of bilateral negotiations with some Members of the Working Party. Therefore, though we understand and appreciate the comment, we are not in a suitable position to amend or supplement the commitment language of this paragraph.

**Question 80**

**Could Viet Nam provide additional clarifications regarding criteria for companies to be licensed to use satellite- earth stations?**

Answer:

The detailed licensing criteria for the use of satellite-earth stations will be developed in consistency with the licensing principles Viet Nam has committed in the paragraph 495 of the draft Working Party Report, document WT/ACC/SPEC/VNM/5/Rev.3.

**Question 81**

**In paragraph 475 related to financial services, could Viet Nam confirm if its future licensing requirements for 100 per cent foreign-owned banks will be purely prudential? If this is the case, to avoid any confusion in the text, we propose to remove the word 'otherwise' and add the adjective 'purely' before the word 'prudential'.**

Answer:

Viet Nam confirms that future licensing requirements for 100 per cent foreign-owned banks will be based on prudential regulations. In our opinion, commitment language in paragraph 475 is clear, which is consolidated on the basis of the final results of bilateral negotiations with some Members of the Working Party. Therefore, though we understand and appreciate the comment, we are not in a suitable position to amend or supplement the commitment language of this paragraph.

**Question 82**

**We thank Viet Nam for providing clarifications on licensing criteria for insurance services licence and securities services licence in Annex 2 of the additional questions and replies (document WT/ACC/VNM/44). We note that in case of incompatibility between these criteria and the commitments undertaken by Viet Nam its services schedule, the commitments will prevail.**

Answer:

Viet Nam agrees that in case of incompatibility between these criteria and the commitments undertaken by Viet Nam in its services schedule, the commitments will prevail.

**Question 83**

**We would propose the following commitment language to be added to the text:**

**"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 two 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; and**
- (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:

In our opinion, commitment language in paragraphs 494 and 495 is clear and correspond to the contents of this proposal. Paragraphs 494 and 495 are consolidated on the basis of the final results of bilateral negotiations with some Members of the Working Party. Therefore, though we understand and appreciate the comment, we are not in a suitable position to amend or supplement the commitment language of these paragraphs.

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**ANNEX 1**

**I - List of Goods and Services in which Business is Prohibited**  
**(Issued with Decree No. 59-2006-ND-CP of the Government dated 12 June 2006)**

No.	Name of Goods and Services	Current Legal Instrument <sup>1</sup>	Industry Management Body
<b>A - Goods</b>			
1.	Weapons, military equipment and technical facilities, ammunition and specialized facilities for the army and police; military paraphernalia (including badges, medals and insignia of the army and police); accessories, and materials and technology used to manufacture the former items.	Decree 47-CP dated 12 August 1996; Decree No. 100-2005-ND-CP.	Ministry of Defence, Ministry of Police.
2.	Drugs of addiction.	Law on Fighting Drugs of Addiction, 2000; Decree No. 67-2001-ND-CP; Decree No. 133-2003-ND-CP.	Ministry of Police.
3.	List I chemicals (stipulated in International Treaties).	Decree No. 100-2005-ND-CP.	Ministry of Industry.
4.	Products of reactionary culture and pornographic products; products serving superstitious purposes or products which are harmful to personal development.	Law on Publishing 2004; Decree No. 03-2000-ND-CP.	Ministry of Culture and Information; Ministry of Police.
5.	All types of firecrackers.	Decree No. 03-2000-ND-CP.	Ministry of Police.
6.	Games and toys which are harmful to the personal development and health of children or to the security, order and safety of society (including electronic games).	Decree No. 03-2000-ND-CP.	Ministry of Education and Training; Ministry of Police.
7.	Veterinary medicine and plant protection agents which are prohibited or not yet permitted to be used in Vietnam pursuant to the Ordinance on Veterinary Medicine and the Ordinance on Protection and Quarantine of Plants.	Ordinance on Veterinary Medicine 2004; Ordinance on Protection and Quarantine of Plants 2001.	Ministry of Agriculture and Rural Development; Ministry of Aquatic Products.
8.	Rare wild animals and plants (including both living animals and processed matter taken from animals) on the lists in international treaties of which Vietnam is a member, and all types of rare wild animals and plants on the lists prohibiting their use and exploitation.	CITES Convention; Decree No. 32-2006-ND-CP.	Ministry of Agriculture and Rural Development; Ministry of Aquatic Products.
9.	Aquatic products which are prohibited from use; aquatic products containing toxic chemicals in excess of the permissible limits; and aquatic products containing life-endangering natural toxins.	Law on Aquatic Products 2003.	Ministry of Aquatic Products.
10.	Fertilisers not on the list of fertilisers permitted to be manufactured, traded and used in Vietnam.	Decree No. 113-2003-ND-CP.	Ministry of Agriculture and Rural Development.

<sup>1</sup> If the current legal instrument has been amended, supplemented or replaced, then the amended, supplementary or replacing legal instrument applies.

No.	Name of Goods and Services	Current Legal Instrument <sup>1</sup>	Industry Management Body
11.	Plant varieties not on the list of plant varieties permitted to be manufactured and traded; plant varieties which are harmful to manufacture, human health, the environment and the ecosystem.	Ordinance on Plant Varieties 2004.	Ministry of Agriculture and Rural Development.
12.	Animal breeding varieties not on the list of varieties permitted to be produced and traded; breeding varieties which are harmful to human health, animal genetic sources, the environment and the ecosystem.	Ordinance on Animal Varieties 2004.	Ministry of Agriculture and Rural Development; Ministry of Aquatic Products.
13.	Specially toxic minerals.	Mineral Law 1996; Decree No. 160-2005-ND-CP.	Ministry of Natural Resources and Environment.
14.	Imported scrap causing environmental pollution.	Decree No. 175-CP dated 18 October 1994.	Ministry of Natural Resources and Environment.
15.	All types of curative medicine for people, all types of vaccine, biological products, cosmetics, chemicals and products for the extermination of insects and bacteria used in homes and in medicine generally which are not yet permitted to be used in Vietnam.	Law on Pharmacy 2005; Ordinance on Private Medical and Pharmaceutical Practice 2003.	Ministry of Health.
16.	Medical apparatus not yet permitted to be used in Vietnam.	Ordinance on Private Medical and Pharmaceutical Practice 2003.	Ministry of Health.
17.	Foodstuff additives, preservatives which assist processing, nutritional substances, functional foodstuffs, high-risk foodstuffs, foodstuffs protected by radioactive means and foodstuffs containing transformed genes not yet permitted by the competent State body.	Ordinance on Safety and Hygiene of Foodstuffs 2003.	Ministry of Health.
18.	Products and materials containing ammonium in the amphibole group.	Decree 12-2006-ND-CP.	Ministry of Construction.



No.	Name of Goods and Services	Current Legal Instrument <sup>1</sup>	Industry Management Body
<b>B - Services</b>			
1.	Brothel businesses, organizing prostitution, trafficking in women and children.	Decree No. 03-2000-ND-CP.	Ministry of Police.
2.	Organized gambling in any form.	Decree No. 03-2000-ND-CP.	Ministry of Police.
3.	Investigation [private detective] services into the secrecy or infringement of State rights, or of the rights and legitimate interests of organizations and individuals.	Decree No. 14-2001-ND-CP.	Ministry of Police.
4.	Marriage broking involving a foreign element for profit-making purposes.	Decree No. 68-2002-ND-CP.	Ministry of Justice.
5.	Adoption broking services involving a foreign element for profit-making purposes.	Decree No. 68-2002-ND-CP.	Ministry of Justice.

**II – List of Goods and Services in which Business is Restricted**  
(Issued with Decree No. 59-2006-ND-CP of the Government dated 12 June 2006)

No.	Name of Goods and Services	Current Legal Instrument <sup>2</sup>	Industry Management Body
<b>A - Goods</b>			
1.	Hunting guns, sports weaponry and ammunition, and protective tools and equipment.	Decree No. 47-CP dated 12 August 1996; Decree No. 08-2002-ND-CP.	Ministry of Police; Ministry of Defence; Committee for Sports and Physical Education.
2.	Goods containing radioactive substances; equipment emitting radiation or radiating sources.	Ordinance on Safety and Control of Radiation 1996; Decree No. 50-1998-ND-CP.	Ministry of Science and Technology.
3.	Industrial explosives; high concentration (98.5% or more) ammonium nitrate (NH <sub>4</sub> NO <sub>3</sub> ).	Decree 27-CP dated 20 April 1995; Decree No. 02-CP dated 5 January 1995; Decree No. 08-2002-ND-CP.	Ministry of Industry.
4.	Types 1 and 2 toxic chemicals (stipulated in International Treaties).	Decree No. 100-2005-ND-CP.	Ministry of Industry.
5.	Rare wild animals and plants (including both living animals and plants and processed matter taken from animals and plants).	CITES Convention; Decree No. 32-2006-ND-CP.	Ministry of Agriculture and Rural Development.
6.	Cigarettes, cigars and all other forms of tobacco finished products.	Decree No. 76-2001-ND-CP and this Decree.	Ministry of Industry; Ministry of Trade.
7.	All types of spirits.	This Decree.	Ministry of Industry.
<b>B - Services</b>			
1.	Karaoke and dancing club services.	Decree No. 11-2006-ND-CP; Decree No. 08-2001-ND-CP.	Ministry of Culture and Information; Ministry of Police.

<sup>2</sup> If the current legal instrument has been amended, supplemented or replaced, then the amended, supplementary or replacing legal instrument applies.

III – List of Goods and Services in which Business is Subject to Conditions  
(Issued with Decree 59-2006-ND-CP of the Government dated 12 June 2006)

No.	Name of Goods and Services	Current Legal Instrument <sup>3</sup>	Industry Management Body
<b>I. Goods and services in respect of which a certificate of satisfaction of business conditions is required:</b>			
<b>A - Goods</b>			
1.	Petrol and oil of all types.	This Decree.	Ministry of Trade.
2.	Natural gas of all types (including filling and storing).	This Decree.	Ministry of Trade.
3.	Medicine for people.	Law on Pharmacy 2005.	Ministry of Health.
4.	Foodstuffs on the list of high-risk foodstuffs.	Ordinance on Safety and Hygiene of Foodstuffs 2003; Decree No. 163-2004-ND-CP.	Ministry of Health.
5.	Veterinary medicine and plant protection agents; raw materials for the production of veterinary medicine and plant protection agents.	Ordinance on Veterinary Medicine 2004; Ordinance on Protection and Quarantine of Plants 2001.	Ministry of Agriculture and Rural Development; Ministry of Aquatic Products.
6.	Antiques, precious objects and national treasures.	Ordinance on Cultural Relics 2004; Decree No. 92-2002-ND-CP.	Ministry of Culture and Information.
7.	Films, tapes and disks (including printing and copying).	Decree No. 11-2006-ND-CP.	Ministry of Culture and Information.
8.	Tobacco raw materials.	Decree No. 76-2001-ND-CP.	Ministry of Industry.
<b>B - Services</b>			
1.	Medical and health services, traditional medicine services.	Ordinance on Private Medical and Pharmaceutical Practice 2003; Decree No. 103-2003-ND-CP.	Ministry of Health.
2.	Medicine business services including services for preserving and testing medicine.	Law on Pharmacy 2005.	Ministry of Health.
3.	Veterinary practice.	Ordinance on Veterinary Medicine 2004.	Ministry of Agriculture and Rural Development; Ministry of Aquatic Products.
4.	Disinfecting and sterilizing services.	Ordinance on Protection and Quarantine of Plants 2001.	Ministry of Agriculture and Rural Development.
5.	Network installation and provision of telecommunications services.	Ordinance on Posts and Telecoms 2002; Decree No. 160-2004-ND-CP.	Ministry of Posts and Telematics.
6.	Internet access services (ISP).	Decree No. 55-2001-ND-CP.	Ministry of Posts and Telematics.
7.	Internet connection services (IXP).	Decree No. 55-2001-ND-CP.	Ministry of Posts and Telematics.
8.	Internet application services in posts and telecoms (OSP Posts, OSP Telecoms).	Decree No. 55-2001-ND-CP.	Ministry of Posts and Telematics.

<sup>3</sup> If the current legal instrument has been amended, supplemented or replaced, then the amended, supplementary or replacing legal instrument applies.

No.	Name of Goods and Services	Current Legal Instrument <sup>3</sup>	Industry Management Body
9.	Provision of postal services.	Ordinance on Posts and Telecoms 2002; Decree No. 157-2004-ND-CP.	Ministry of Posts and Telematics.
10.	Domestic and international mail courier services.	Ordinance on Posts and Telecoms 2002; Decree No. 157-2004-ND-CP.	Ministry of Posts and Telematics.
11.	Electricity distribution, wholesale, retail and specialized consultancy on electricity.	Law on Electricity 2004.	Ministry of Industry.
12.	Services for the organization of artistic performances.	Decree No. 11-2006-NDCP.	Ministry of Culture and Information.
13.	Film making co-operative services.	Decree No. 48-CP dated 17 July 1995;	Ministry of Culture and Information.
14.	Multi-modal international transport services.	Decree No. 125-2003-ND-CP.	Ministry of Transport and Communications.
15.	Services being the design of means of transportation.	Decree No. 125-2003-ND-CP.	Ministry of Transport and Communications.
16.	Insurance services: life insurance, non-life insurance, reinsurance, insurance brokerage and insurance agency.	Law on Insurance Business 2000; Decree No. 42-2001-ND-CP; Decree No. 43-2001-ND-CP.	Ministry of Finance.
17.	Securities and securities market services: brokerage, self-trading, portfolio management, underwriting issues of securities, financial and securities investment consultancy, registration, depository and clearing services, underwriting issues of Government bonds and local government bonds; tendering for Government bonds, Government guaranteed bonds and local government bonds.	Decree No. 141-2003-ND-CP; Decree No. 144-2003-ND-CP.	Ministry of Finance.
18.	Labour export services.	Decree No. 81-2003-ND-CP.	Ministry of Labour, War Invalids and Social Affairs.
19.	Legal consultancy services (including giving advice and acting as counsel) conducted by Vietnamese lawyers.	Ordinance on Lawyers 2001; Decree No. 94-2001-ND-CP.	Ministry of Justice.
20.	Legal consultancy services conducted by foreign lawyers.	Decree No. 87-2003-ND-CP.	Ministry of Justice.
21.	Seal engraving services.	Decree No. 08-2001-ND-CP.	Ministry of Police.
22.	Security services.	Decree No. 14-2001-ND-CP.	Ministry of Police.
23.	International travel services.	Law on Tourism 2005.	General Department of Tourism.
<b>II. Goods and services in which business is subject to conditions but in respect of which a certificate of satisfaction of business conditions is not required:</b>			
<b>A - Goods</b>			
1.	Toxic chemicals other than those on the Lists stipulated in International Treaties.	Decree No. 100-2005-ND-CP.	Ministry of Industry.
2.	Foodstuffs other than those on the List of high-risk foodstuffs, raw materials for foodstuffs, additives and preservatives which assist in processing.	Ordinance on Safety and Hygiene of Foodstuffs 2003; Decree No. 163-2004-ND-CP; Decree No. 59-2005-ND-CP.	Ministry of Health; Ministry of Aquatic Products.

No.	Name of Goods and Services	Current Legal Instrument <sup>3</sup>	Industry Management Body
3.	All types of medical equipment and apparatus.	Ordinance on Private Medical and Pharmaceutical Practice 2003.	Ministry of Health.
4.	Fishing equipment and apparatus (including raw materials to make fishing equipment and apparatus) and equipment to exploit aquaculture.	Decree No. 59-2005-NDCP.	Ministry of Aquatic Products.
5.	Aquaculture feed.	Decree No. 59-2005-NDCP.	Ministry of Aquatic Products.
6.	Animal breeding varieties permitted to be produced and traded.	Ordinance on Plant Varieties 2004; Decree No. 59-2005-NDCP.	Ministry of Agriculture and Rural Development; Ministry of Aquatic Products.
7.	Animal feed.	Decree 15-CP dated 19 March 1996.	Ministry of Agriculture and Rural Development.
8.	Main plant varieties and rare plant varieties which need to be protected and preserved.	Ordinance on Plant Varieties 2004.	Ministry of Agriculture and Rural Development.
9.	Fertilisers.	Decree No. 113-2003-ND-CP.	Ministry of Agriculture and Rural Development.
10.	Building materials.	Law on Construction 2003.	Ministry of Construction.
11.	Coal.	Mineral Law 1996; Decree No. 160-2005-ND-CP.	Ministry of Industry.
12.	Telecommunications equipment and materials (except radio broadcasting and receiving).	Ordinance on Posts and Telecoms 2002; Decree 160-2004-ND-CP.	Ministry of Posts and Telematics.
13.	Radio broadcasting and receiving equipment.	Ordinance on Posts and Telecoms 2002; Decree 24-2004-NDCP.	Ministry of Posts and Telematics.
14.	All types of machinery, equipment, materials and substances having strict requirements regarding labour safety and hygiene.	Law on Labour; Decree No. 06-CP dated 20 January 1995; Decree No. 110-2002-ND-CP.	Ministry of Labour, War Invalids and Social Affairs; Ministry of Health.
15.	Gold.	Decree No. 174-1999-ND-CP; Decree No. 64-2003-ND-CP.	State Bank of Vietnam.
<b>B - Services</b>			
1.	Slaughtering and preliminary processing of animals and animal products; preservation and transportation of animal products after slaughtering.	Ordinance on Veterinary Medicine 2004.	Ministry of Agriculture and Rural Development; Ministry of Aquatic Products.
2.	Services regarding plant and animal varieties as regulated by the Ordinance on Plant Varieties and the Ordinance on Animal Varieties.	Ordinance on Plant Varieties 2004; Ordinance on Plant Animal 2004.	Ministry of Agriculture and Rural Development; Ministry of Aquatic Products.
3.	Postal agency services, mail courier agency services (including mail courier agency for foreign express courier organizations).	Ordinance on Posts and Telecoms; Decree No. 157-2004-ND-CP.	Ministry of Posts and Telematics.

No.	Name of Goods and Services	Current Legal Instrument <sup>3</sup>	Industry Management Body
4.	Telecomm agency services.	Ordinance on Posts and Telecoms 2002; Decree No. 160-2004-ND-CP.	Ministry of Posts and Telematics.
5.	Public internet agency services.	Decree No. 55-2001-NDCP.	Ministry of Posts and Telematics.
6.	Services being distribution of publications.	Law on Publishing 2004.	Ministry of Culture and Information.
7.	Advertising services.	Ordinance on Advertising 2001; Decree No. 24-2003-NDCP.	Ministry of Culture and Information.
8.	House leasing services.	Decree No. 08-2001-NDCP.	Ministry of Police.
9.	Business services in 10 or more storey buildings as hotels, residences or working offices.	Decree No. 08-2001-NDCP.	Ministry of Police.
10.	Pawn services.	Decree No. 08-2001-NDCP.	Ministry of Police.
11.	Printing services.	Decree No. 08-2001-NDCP.	Ministry of Police.
12.	Services for making, printing and distributing all types of maps not within State management authority at the central level.	Decree No. 12-2002-NDCP.	Ministry of Natural Resources and Environment.
13.	Inspection services of all types of machinery, equipment, materials and substances having strict requirements regarding labour safety and hygiene.	Decree No. 06-CP dated 20 January 1995; Decree No. 110-2002-ND-CP.	Ministry of Labour, War Invalids and Social Affairs.
14.	Occupational training and consultancy services.	Decree No. 02-2001-NDCP.	Ministry of Labour, War Invalids and Social Affairs.
15.	Work and career introduction services.	Decree No. 19-2005-NDCP.	Ministry of Labour, War Invalids and Social Affairs.
16.	Automobile transport services.	Law on Road Transport 2001; Decree No. 92-2001-NDCP.	Ministry of Transport and Communications.
17.	Rail transport services.	Law on Railways 2005.	Ministry of Transport and Communications.
18.	Rail Infrastructure business	Law on Railways 2005.	Ministry of Transport and Communications.
19.	Rail transport support services		
20.	Urban Rail transport services		
21.	Services for construction, upgrade, repair and recovery of inland watercraft.	Law on Inland waterway transport Decree No. 21-2005-ND-CP.	Ministry of Transport and Communications.
22.	Services for handling cargo and servicing passengers at port and inland waterways		
23.	Inland waterway transport services		

No.	Name of Goods and Services	Current Legal Instrument <sup>3</sup>	Industry Management Body
24.	Shipping agency	Decree No. 10-2001-ND-CP	Ministry of Transport and Communications.
25.	Oceanic transport Agency		
26.	Marine Broking services		
27.	Services of supplying sea-going ship.		
28.	Services of calculating and checking cargo.		
29.	Ship towing services		
30.	Cargo handling services at seaports.		
31.	Ship cleaning services		
32.	Oceanic transport services.		
33.	Oceanic transport services.	Decree No. 57-2001-ND-CP.	Ministry of Transport and Communications.
34.	Customs agency services.	Law on Customs 2001; Decree No. 79-2005-ND-CP.	Ministry of Finance.
35.	Accounting services.	Law on Accounting 2003; Decree No. 129-2004-ND-CP.	Ministry of Finance.
36.	Auditing and other related services regarding finance, accounting and tax.	Law on Accounting 2003; Decree No. 105-2004-ND-CP.	Ministry of Finance.
37.	Valuation services.	Ordinance on Prices 2002; Decree No. 101-1112005-ND-CP.	Ministry of Finance.
38.	Building services as stipulated in the Law on Construction.	Law on Construction 2003.	Ministry of Construction.
39.	Services for foreigners and Vietnamese residing overseas to rent houses in Vietnam.	Decree No. 56-CP dated 18 September 1995; Decree No. 08-2001-ND-CP.	Ministry of Construction; Ministry of Police.
40.	Tourist lodging services	Law on Tourism 2005.	General Department of Tourism.
41.	Domestic travel services		
42.	Travel Agency		
43.	Tourist transportation services		
44.	Tourism services within tourism zones, tourism sites and tourist centres.		
45.	Tour guide services		
46.	Commercial evaluation services	Commercial Law 2005; Degree No. 20-2005-ND-CP.	Ministry of Trade.

## ANNEX 2

Table 12: Import Prohibitions (as per August 2006)

HS	Description	Rationale	Legal basis	Note
1207 91 00	Poppy seeds.	Materials for production of opium		
1302 11 00	Opium, anhydrous morphine anhydrous content.	Materials for production of opium		
2402, 2403	Tobacco, cigarettes, and other kinds of manufactured tobacco.	Limit the consumption of cigarettes		Import prohibition to be abolished upon accession
2618 00 00	Granulated slag (slag sand) from the manufacture of iron or steel.	Residues causing environmental pollution		
2619 00 00	Slag, dross (other than granulated slag), scalings and other waste from the manufacture of iron or steel.	Residues causing environmental pollution		
2620	Ash and residues (other than from the manufacture of iron or steel) containing metals or metal compounds.	Residues causing environmental pollution		
2621 00 00	Other slag and ash, including seaweed ash (kelp).	Residues causing environmental pollution		
3601 00 00	Propellant powders.	Materials for production of explosives		
8710 00 00	Tanks and other armoured fighting vehicles, motorized, whether or not fitted with weapons, and parts of such vehicles.	Military equipment		
ex 8711	Motorcycles of a cylinder capacity exceeding 175cc.	Security and traffic safety		Import prohibition to be replaced by automatic import licensing not later than 1 June 2007
ex 8702 8703 8704 8707 8708	Right-hand steering vehicles (including their components and those modified to left-hand drive ones prior to importation into Viet Nam), except for specialized right-hand steering vehicles operating in small areas such as cranes, trench and canal digging machines, garbage trucks, road sweepers, road construction trucks, airport passenger transportation buses, fork-lifts used at warehouses and ports.			
9301 00 00	Military weapons, other than revolvers, pistols and the arms of heading 307: revolvers, pistols.	Military equipment	Decision No. 28/TTg dated 13 January 1997 by PM	



HS	Description	Rationale	Legal basis	Note
9302 00 00	Revolvers and pistols, other than those of heading 9303 or 9304.	Weapons	Decision No. 28/TTg dated 13 January 1997 by PM	
9304	Other arms (for example, spring, air or gas guns and pistols, truncheons), excluding those of heading 9307.	Weapons	Decision No. 28/TTg dated 13 January 1997 by PM	
9305	Parts and accessories of Articles of headings 9301 to 9304.	Weapons	Decision No. 28/TTg dated 13 January 1997 by PM	
9306	Bombs, grenades, torpedoes, mines, missiles and similar munitions of war and parts thereof; cartridges and other ammunition and projectiles and parts thereof, including shot and cartridge wads.	Weapons	Decision No. 28/TTg dated 13 January 1997 by PM	
9307	Swords, cutlasses, bayonets, lances and similar arms and parts thereof and scabbards and sheaths thereof.	Weapons	Decision No. 28/TTg dated 13 January 1997 by PM	
NA	Second-hand consumer goods, including: <ul style="list-style-type: none"> <li>- Textiles and clothes; footwear;</li> <li>- Electronic goods;</li> <li>- Refrigerating equipment and products;</li> <li>- Household electric goods;</li> <li>- Furniture;</li> <li>- Household goods made from porcelain, clay, glass, metal, resin, rubber, plastic, and other materials.</li> </ul>	Product safety	Decision No. 28/TTg dated 13 January 1997 by PM	
NA	Used materials and equipment, including: <ul style="list-style-type: none"> <li>- Used machines, structures, inner tires, tires, accessories, motors of automobiles, tractors, 2-wheel and 3-wheel motorbikes;</li> <li>- Internal combustion engines and machines with internal combustion engines having capacity below 30 CV</li> <li>- Bicycles, 2-wheel and 3-wheel vehicles;</li> </ul>	Traffic safety	Decision No. 28/TTg dated 13 January 1997 by PM	
NA	Toxic chemicals. List published by the Ministry of Industry.	Environment protection, protection of human health	Decision No. 28/TTg dated 13 January 1997 by PM	

HS	Description	Rationale	Legal basis	Note
NA	Garbage and waste materials which may cause environmental pollution and epidemics. List published by the Ministry of Science and Technology.	Environment protection, protection of human health		
NA	Depraved and reactionary cultural products	Public morals		
NA	Children toys having adverse effect in moral education, public order and security.	Public morals and social security		
NA	Narcotics.	Protection of human life		
NA	Firecrackers (excluding fire signal used for maritime safety and other purposes as stipulated by the Prime Minister in the official Document No.1383/CP-KTTS dated 23 November 1998).	Protection of human health & life		
NA	Right-hand steering vehicles (including their components and those modified to left-hand drive ones prior to importation into Viet Nam), except for specialized right-hand steering vehicles operating in small areas such as cranes, trench and canal digging machines, garbage trucks, road sweepers, road construction trucks, airport passenger transportation buses, fork-lifts used at warehouses and ports.	Traffic safety		
NA	Asbestos products and materials under amphibole group.	Protection of human health		
NA	Specialized encryption machines and encryption software subject to State secret.	National security		This restriction shall not apply to general, commonly traded goods equipped with encryption technology which are destined for mass consumption

Note: NA - Not applicable.

These products are not allowed to be circulated in the domestic market on a normal commercial basis. Importation for non-commercial purposes might be permitted in exceptional circumstances.