

WORLD TRADE ORGANIZATION

RESTRICTED

WT/ACC/VNM/9

26 June 2000

(00-2598)

**Working Party on the
Accession of Vietnam**

Original: English

ACCESSION OF VIETNAM

Additional Questions and Replies

The Government of the Socialist Republic of Vietnam has submitted replies to additional questions concerning the Memorandum on the Foreign Trade Regime of Vietnam, with the request that they be circulated to the members of the Working Party. Hereunder are replies to questions raised by WTO members on the basis of documents WT/ACC/VNM/6 and WT/ACC/VNM/7.

TABLE OF CONTENTS

	Page No.	Question No.
II. ECONOMY, ECONOMIC POLICIES AND FOREIGN TRADE		
2. Economic Policies		
(a) Main directions	1	1-22
(b) Monetary and fiscal policies	11	23-31
(c) Foreign exchange and payments system	14	32-37
(d) Foreign and domestic investment policies	18	38-42
(d) Competition policies	19	43-
III. FRAMEWORK FOR MAKING AND ENFORCING POLICIES AFFECTING FOREIGN TRADE IN GOODS AND TRADE IN SERVICES		
1. Power of Executives, Legislative and Juridical Branches of Government	20	45-57
IV. POLICIES AFFECTING TRADE IN GOODS		
1. Import Regulations		
(a) Registration Requirements for engaging in importing	27	58-69
(b) Characteristics of national tariff	31	70-77
(d) Other duties and charges, specifying any charges for services rendered	33	78-85
(e) Quantitative import restrictions, including prohibitions, quotas and licensing systems	36	86-105
(f) Licensing procedures	42	106-116
(h) Customs valuation	45	117-119
(j) Pre-shipment inspection	47	120
(k) Application of internal taxes on imports	47	121-129
(l) Rules of origin	50	130
(m) Anti-dumping, countervailing duty and safeguard regimes	50	131-134
(p) Other border measures, e.g. any other schemes that have border effects similar to those of the measures listed under (e) above	51	135-136
2. Export Regulation	52	
(c) Quantitative export restrictions	52	137-139
(f) Export financing, subsidy and promotion policies	54	140-142
(h) Import duty drawback schemes	55	143
3. Internal policies affecting foreign trade in goods		
(a) Industrial policy, including subsidy policies	55	144-145
(b) Technical specifications and standards	56	146-155
(c) Sanitary and phytosanitary measures, including measures taken with respect to imports	59	156-157
(d) Trade-related Investment Practices	60	158-172
(e) State-trading practices and SOE	67	173-189
(g) Free economic zones	73	190
(h) Trade-related environment policies	73	191
(k) Government procurement	74	192-193
4. Policies affecting Importation and Exportation of Agricultural products	75	194-196

	Page No.	Question No.
V.	TRADE-RELATED INTELLECTUAL PROPERTY REGIME	
2.	Substantive standards of protection including procedures for acquisition and maintenance of intellectual property rights	
(a)	76	197-
(d)	77	200-201
(e)	78	202-215
(ii-iii)	87	216-217
(iv-vii)	87	218-219
	Architectural Services, Engineering Services, Integrated Engineering Services, Urban Planning Services	
2.	88	220
	Telecommunications Services	
7.	88	221-226
	Banking and Financial Services	
VI.	92	227-228
	INSTITUTIONAL BASE FOR TRADE AND ECONOMIC RELATIONS WITH THIRD COUNTRIES	
	ANNEX I	
	93	
	List of Imported Items Subject to non-Tariff Barriers in 1999	
	ANNEX II	
	96	
	List of Export prohibited products, unless indicated in investment licenses of FDI enterprises	
	ANNEX III	
	98	
	List of Narcotics	

II. ECONOMY, ECONOMIC POLICIES AND FOREIGN TRADE

2. Economic Policies

(a) Main directions

Question 1.

Please confirm Vietnam's commitment not to introduce new measures inconsistent with Article III GATT. Please update the Working Party on the removal of the existing one.

Answer:

Vietnam is in the process of reviewing its legislative documents to identify provisions and regulations inconsistent with Article III GATT 1994 as well as requirements for adjusting its institutional and regulatory framework towards consistency with GATT rules, to narrow and/or abolish those discrepancies. In reality, Vietnam has made the following amendments:

- Applying uniformly value added taxes to domestic and imported books and newspapers.
- Narrowing the scope of enterprises those are exempt from VAT and level of VAT deduction.
- Elimination of dual pricing system to a number of products and services.

The amendments being done continuously under the legislative programmes will be notified frequently to the Working Party.

Question 2.

Regarding Question 3 in WT/ACC/VNM/6, Vietnam provides details about protection of Agricultural domestic production. Is agriculture the only sector that is protected under "securing proper protection to domestic production" or are other sectors, such as paper, also provided such protection?

Answer:

Agriculture is not the only sector where some protection is provided "securing proper protection to domestic production". The paper production industry is another example:

The paper production industry is characterized by small scale, backward technology, poor range of products, low quality and a high production costs that are even higher than the global price.

The competitiveness of the industry is very low. However, the existence and development of the domestic paper industry of Vietnam is very much related to the living standard of the farmers who grow material trees for the industry. Therefore, protection by the State through tariff and restrictive imports control is necessary (tariff rate for printing papers, pupils textbook papers: 40 per cent; for newspaper and magazine papers: 20 per cent; thin and sanitary papers: 40 per cent, packaging paper, cardboard paper: 30 per cent).

Question 3.

Please specify what is meant by "non-excessive protection that gradually leads to a competitive environment?" Does Vietnam accept that after the accession to the WTO the only "protection" available will be the one resulting from the WTO Treaty in the circumstances foreseen thereof?

Answer:

This phrase is not quoted in any of Vietnam's legal documents but a policy orientation pursued by the Government of Vietnam. Vietnam always strives for a balanced level between protection needs and competition encouragement to maintain the development dynamic in each economic sector. This policy will be made compatible to WTO principles and under the tendency of decreasing protection, considering the level of economic development. In the process of accession, Vietnam will concretize such policies and measures which meet the development needs as well as WTO's principles.

Question 4.

Please submit to the Working Party the effective lists of the commercial activities that remain an exclusive domain of the State?

Answer:

In fact there are few goods and services that are solely provided by state enterprises (e.g. supply of gasoline, petroleum and electricity). Detailed information on Vietnam's enterprises and their corresponding businesses as stipulated in Article XVII of GATT 1994 is provided in the G/STR/N/4 formatted Notification on State Trading Enterprises (document WT/ACC/VNM/14).

Question 5.

Please specify under which circumstances labour intensive enterprises may be considered for assistance.

Answer:

There is no formal labour-intensive definition and it is, therefore, unclear about the specific number of labourers employed in an enterprise to be considered as "labour-intensive". However, enterprises for which full time employment exceeding the below-stated amounts year-average may be given certain privileges:

- 100 labourers in the urban areas;
- 20 labourers in socio-economically disadvantaged areas;
- 50 labourers in other areas.

Detailed information is fully provided for in Lists B and C of the Decree No.51/1999/ND-CP dated 8 July 1999 providing details to implement the amended Law on Domestic Investment Promotion No.3/1998/QH10.

Question 6.

Please specify how the aims of the Laws on Company and Private Enterprises, listed in the reply to this question, were actually achieved.

Answer:

The Law on Companies and the Law on Private Enterprises promulgated by the Vietnam National Assembly of the 8th session at the end of 1990 was an important milestone in the reform process of the Vietnamese economy. At that time, the objectives of these laws were:

- To develop a multisectoral merchandised economy; to mobilize and efficiently utilize internal capital, labour and natural resources and to create more employment;
- To protect legitimate interests of investors, accelerate the economic growth;
- To enhance the effectiveness and capability of state management of business activities.

These two laws have contributed to the success of socio-economic development in Vietnam over the last 10 years. During that period, there were about 40,000 newly established enterprises with the aggregated registered capital of 21,000 billion VND approximately (estimated 1.5 billion USD). It meant that nearly 5,000 enterprises with the total registered capital of more than 2,600 billion VND were newly established annually. The production of private enterprises and companies account for around 8 per cent GDP. According to a rough estimate, for the last 10 years, this sector has created more than 500,000 jobs and contributed a considerable source into budgetary revenue. Additionally, more than 1.5 million business households, a distinctive type of business guided by the Decree No.66/HDBT dated 2 March 1992 was also considered as a result of the issuance of Law on Companies and the Law on Private Enterprises. These households are employing 3 million labourers and generate approximately 9 per cent GDP. The strong development of private enterprises and companies has undoubtedly made the economy more dynamic, flexible to better serve diverse needs of life.

At present, Vietnam's socio-economic development has motivated the adaptation of these two Laws. Firstly, Vietnam realized the necessity of mobilizing all internal and external sources and encouraging all economic sectors and types of businesses into industrialization and modernization process.

Secondly, during the last 10 years, the overall legal framework and that regulating enterprises in particular have been improved. Consequently, some provisions of the Law on Companies and the Law on Private Enterprises have no longer been compatible with other applicable laws, so that they resulted in discrepancies in interpretation and implementation of other related laws and limited the effective enforcement of the related regulations.

Thirdly, after the 10-year reform, the number of enterprises in the market has significantly increased; The market mechanism better functions well in terms of both scale and frequency; the economy more liberal, business transactions have increased in both absolute and relative terms; Forms of business activities have become much more complicated and diversified. Meanwhile, some regulations in the Law on Companies and the Law on Private Enterprises have proved not to be adaptive to such new development any longer.

These shortcomings and deficiencies of the two laws have limited investors' flexibility in selecting investment forms and taking investment opportunities which are relevant to their capability. Such circumstance partially restricted the mobilization of sources to develop the domestic economy and weakened the effectiveness of state management and supervision over enterprises.

In order to overcome the mentioned shortcomings, the Vietnamese National Assembly in June 1999 passed the Law on Enterprises covering the applicable scopes of both the previous Law on Companies and the Law on Private Enterprises. The passage of Enterprise Law is one of fundamental solutions to improve the existing business environment so as to achieve the following goals: to liberalize and mobilize all production forces and potential; to facilitate business activities for all households and enterprises; to create favourable environment and conditions for the private sector to develop legally in all economic fields without restriction on size or scope; to create jobs; to enhance enforcement of the law based state administration; and to promote, guide and assist investment activities for development .

The Law on Enterprises has the following major changes:

- To broaden the subjects eligible to set up and contribute to enterprise capital;
- To reform and simplify administrative procedures required for the establishment of an enterprise by combining establishment application with business registering into a single stage;
- To grant more business autonomy and creative capability to enterprises and people. This is reflected and implemented through state management over different business sectors. Particularly, business sectors are divided into 6 following categories: (1) prohibited sectors; (2) conditional business sectors; (3) business sectors where legal capital is required; (4) business sectors where professional licence is required; (5) business sectors where only the form of a partnership company or a private company are allowed; and (6) others. Except those under prohibited sectors, regarding those are under categories from the second to the fifth, enterprises satisfying all requirements stipulated by the related laws, ordinances and decrees and having completed its business registration are allowed to operate in their registered economic fields. Regarding the other business sectors, enterprises can automatically register and carry out their registered business;
- To add more types of enterprises for investors to make their choice, and to create a legal basis for them to better manage risks in business activities;
- To specify more instruments to protect the legitimate interests of all investors including minority shares holders;
- To provide for regulations on enterprise's de-merging, acquisition, split, merging and transformation; This gives enterprises more chances and flexibility in extending their business scope, size and sectors/lines;
- To improve the effectiveness of state management over enterprises as well as the mechanism for controlling and supervising enterprise's business operation after registration.

In effect, the Law on Enterprises with the above-mentioned modifications has really attracted attention and expectation of business community and the whole society in general. Since the first months of its entry into force, positive impacts by Law on Enterprises has been proved by the fact that the number of newly-registered enterprises pursuant to this Law has reached a record of about 40,000.

Question 7.

Regarding Question 12 in WT/ACC/VNM/6, we welcome Vietnam's consolidation of the Law on Company and the Law on Private Enterprise into the Law on Enterprise. However, could Vietnam provide more detail on what constitutes a state-owned public interest enterprise as described in Decision 20/1998/CT/TTg? Could Vietnam also provide a complete list of those sectors in which " State-owned public interest enterprises" operate?

Answer:

State-owned public interest enterprises are described in Decree 56/CP dated 2 October 1996 of the Government and elaborated in the Circular 1/BKH/DN dated 29 January 1997 of The Ministry of Planning and Investment. Details are as follows:

Article 1 of The Decree 56/CP of the Government provides that " State-owned public interest enterprises are an independent state-owned enterprise or self-financing affiliate to a national corporation directly implements a task related to national defense, security in manufacturing a product or supplying public services as per policy or commercial order of, at a price or within a price framework by the Government but on non-lucrative basis. For example:

- Public transport and urban works: public passengers transport, sanitary services, ecological and environmental protection, management of park, green trees, zoo-park, urban lighting system, water supplies and sewage services, mourning services in cities.
- Printing and publication of educational books and textbooks, political books and newspapers;
- Production and publication of material document films, scientific films, television films and films for children.
- Production of goods and services under social policy of the government: Production and provision of culinary salt, emotion pictures and other goods and services for remote and mountainous, island regions; production and provision of anti-wide spread disease medicines for human, plants and animals; production of goods and services for handicapped people.

Question 8.

Vietnam should provide details on the procedures for the allocation of annually fixed subsidies for each Large National Corporation, e.g. which departments of organs decide allocations of subsidies? What criteria is used to establish the allocation of subsidies to each corporation?

Answer:

Vietnam does not have an annual fixed program of subsidies in favour of national corporations. All enterprises may be given incentives in taxes, credit terms when they operate in disadvantaged regions or with the public interest purpose... etc in accordance with a certain subsidy and domestic programmes.

Total annual subsidies are not fixed and necessary adjustment would be applicable in each specific circumstance.

All enterprises, regardless of the scale or nature of activities, may declare bankruptcy in case of falling into critical difficult circumstances except such bankruptcy threatens to result in big losses to the society. In this case, the enterprise may be financed to recover it's business operation.

All necessary information relating to industrial subsidies are provided in the WTO secretariat formatted notification (document WT/ACC/VNM/13).

- Price Policies

Question 9.

A discriminative double-pricing policy for foreigners dampens foreign inventors' enthusiasm to invest in Vietnam. A serious gap still remains between prices paid by the Vietnamese and those paid by foreigners, although some progress has been made through the Prime Minister's Decision No.53, dated 26 March 1999. We suggest that the double-pricing policy should be abolished. Abolition of such doubled pricing policy is a major investment incentive.

Answer:

Recently, the Vietnamese Government applied many necessary measures to narrow such gaps, especially in pricing issues:

- Electricity : sale price applicable to foreign invested enterprises has been lowered;

- Prices and telecommunications fees: telephone installation fees are applied equally to foreign invested companies or foreigners and Vietnamese enterprises or Vietnamese people; reduction of subscriber fees for foreign invested companies and foreigners. Local telephone tariff are applied equally for foreign invested companies and foreigners and Vietnamese people. From 10 July 1999, international telephone call fees are reduced by 10 per cent and extra charges of hotels are limited to 15 per cent;
- Water supply: Price of water is applied in non-discriminatory manner.

Vietnam intends to adjust pricing policy gradually with a view to a non-discriminatory single tariff .

Question 10.

Does Vietnam commit to eliminating the disparities between utility costs to foreign and national enterprises? Please submit a more detailed timetable for the elimination of such disparities that provided in question 24.

Answer:

Please refer to the Action Plan on Pricing Policy (WT/ACC/VNM/10) and the answer 9.

Question 11.

With respect to Question 24 in WT/ACC/VNM/6, we are pleased that Vietnam has made some changes to narrow some price differentials in certain sectors and plans to eliminate differences for water and telephone installations. However, Vietnam states that it is only considering narrowing differences for other sectors (air passenger tariff). We strongly encourage Vietnam to eliminate all dual pricing, especially in electricity sector.

Answer:

Please refer to answer 9.

Question 12.

We appreciate Vietnam's efforts, as outlined in this section, to lay out its plans to reform its price controls in accordance with the WTO. The reform effort should include Vietnam recognition of national treatment and the avoidance of prejudicial effects on imports in Article III of the GATT.

We would appreciate further clarification on this process, as follows: please confirm that all such controls on the prices of goods and services are notified to the public in the "Market and Price Bulletin" as noted in response to the question 26 of WT/ACC/VNM/6.

Answer:

The Market and Price Bulletin issued by an authorized agency of Vietnam is to provide information about current fluctuation of prices in response to the demands of administration bodies of the State and business community, but not the official publication of pricing control measures by the Government.

All legal documents are publicized in mass media.

Question 13.

Please update the list contained in WT/ACC/VNM/3/Add.1 and indicate that an item on this list is ready to be removed and phased out from the dual price mechanism.

Answer:

Please refer to the answers 9 and 10.

Question 14.

Please provide more information on the steps an item undergoes to be eliminated including a general time frame for this process in an effort to make Vietnam's price control system more transparent.

Answer:

The Vietnamese Government still maintains pricing control on electricity, telecommunications fees, water supply, ceiling price to petroleum, steel, cement, fertilizer, papers because of their casual linkage to macroeconomic stabilization and life of the people in all classes.

From the year 2000, the Government will gradually phase out goods and services subject to pricing control, at the coming stage, on fertilizer, cement, steel, paper.

Question 15.

Under what conditions would Vietnam continue its plans for liberalization of their remaining price controls on urea fertilizer, cement, iron, steel and newsprint, after 2000? What are Vietnam's plans concerning liberalization of these products in the future? What impediments exist to allowing market priced sales to take place in these industries?

What are Vietnam's plan concerning future interventions by the State in the pricing of commercial exchanges for other products and services?

Answer:

From 2000, Vietnam will gradually phase out pricing controls on fertilizer, cement, steel, printing papers when the supply and demand relation of these goods comes to a balanced and sound basis, market prices get into sound normal operation which creates favorable and fairly competitive environment among enterprises.

There is no plan to increase the intervention by the government in regulating prices in other goods and services.

Question 16.

Please update the Working Party on the measures taken to eliminate dual pricing.

Answer:

Please refer to the Action Plan on Pricing Policies (WT/ACC/VNM/10) and the answer 9.

Question 17.

Vietnam affirms that it intends to strengthen price supervision. How this will apply in practice.

Answer:

The State regulates market prices by macroeconomic policies and instruments such as fiscal and monetary measures, reserve ratio requirement, etc.

At Present, the Government of Vietnam only keeps direct control over prices of a certain important public utility goods and services including electricity, postal and telecommunications charges, port charges, and determines the ceiling selling prices of gasoline and petroleum, liquefied gas, iron and steel, cement, journal printing paper.

In the coming time, the list of items subject to the State's direct pricing control will be shortened to enhance business autonomy.

Question 18.

Is price control only applied to domestically produces goods?

Answer:

The control over prices of goods/services subject to the State pricing control is applied both to domestically produced goods and imports.

Question 19.

Please include specific information on the planned intensification of price supervision referred to the response to the question 25 of WT/ACC/VNM/6.

Answer:

There is no further information other than those described in answer 25 of WT/ACC/VNM/6.

- **Privatization Plans**

Question 20.

Please update the Working Party on the ongoing process of equitization. Does Vietnam intend to increase the number of companies in which foreigners are allowed to buy shares?

Answer:

The ongoing process of equitization in Vietnam: By the end of December 1999, the cumulative total of equitized enterprises has reached 370 (250 equitized enterprises in 1999 inclusive), of which 43 enterprises have registered capital of more than 10 billion VND and 6 enterprises have foreign shareholding. Since ownership diversification of state-owned enterprises is an important solution in the process of Vietnam's enterprise reform, the number of equitized enterprises in 2000 will be enlarged rapidly.

Regarding sales of state-owned enterprises shares to foreign investors: With the view of attracting more capital, new technology through the contribution of capital by foreign investors, the Vietnamese Government issued the Decree No.44/1998/ND-CP dated 29 June 1998 on transformation of state-owned enterprises into joint-stock companies and the Prime Minister issued the Decision No.145/1999/QD-Ttg dated 28 June 1999 providing regulations on sales of SOEs shares to foreign investors (including list of sectors where sale of shares to foreign investors are permitted); the number

of enterprises selling shares to foreign investors depends on size and type of each enterprise as well as its specific objectives.

Please refer to the answer 21 for the list of in sectors where sale of shares to foreign investors are permitted

Question 21.

Please detail the conditions which apply for buying shares and which were under preparation at the time of the last Working Party session.

Answer:

Pursuant to the Decision No.145/1999/QĐ-Ttđ of 28 June 1999 issued by the Prime Minister establishing regulations on sales of SOEs shares to foreign investors, foreign organizations and individuals are allowed to buy shares in the joint-stock companies operating in the following sectors:

- Textiles and garments sector;
- Footwear sector;
- Leather-processing sector;
- Agricultural products, forestry and marine products processing sector;
- Other consumer products manufacturing sector;
- Construction materials sector;
- Road transportation, internal waterway transportation and container merchandise transportation
- School stationery and learning instruments manufacturing sector;
- Children toys manufacturing sector;
- Hotel and related services sector;
- Mechanical sector;
- Exports producing enterprises which operate in above sectors.

Foreigners are allowed to purchase shares directly or through Vietnamese financial institutions or banks or through foreign financial institutions or banks operating within Vietnamese territory. Foreign investors are permitted to open accounts in those financial institutions or banks.

The total value of shares sold to foreigners must not exceed 30 per cent of the company's registered capital. In case that the value of shares registered to be bought by foreigners exceeds this threshold, an auction is required.

Shares purchases by foreign investors are paid in VND. Foreign currencies must be converted at the average inter-bank exchange rate announced by the State Bank of Vietnam at the time of sales.

The sales of SOEs shares must be made publicly known through mass media.

Regarding conditions for transfer of stocks:

- Foreign investors who engage in the management of a joint stock company are allowed to transfer their stocks after 3 years as from the date of his purchase of the company's shares.
- Foreign investor who do not engage in the management of a joint stock company are allowed to transfer their stocks after 1 years as from the date of his purchase of the company's shares.

Question 22.

The response to question 295 in WT/ACC/VNM/6 notes that Vietnam it is pushing forward its program of “equitization” of State-owned enterprises.

We understand that this process is intended to foster non-state participation in the ownership and management of State-owned firms.

We seek further information from Vietnam on:

- **how the process of equitization is intended to work; (b) Where in the process Vietnam now find itself relative to its ultimate goals for the program, particularly with respect to equitization of its large national corporations; and**
- **What goals the program has ultimately, with respect to private ownership of firms and enterprises within Vietnam’s economy, if anything.**

Answer:

Equitization is an important measure in the process of reform of enterprises in Vietnam. Pursuant to the Guidance 20/TTG/1998 dated 21 April 1998 of The Prime Minister on Acceleration of restructure and reform of state owned enterprises, line ministries must classify state-owned enterprises into 3 groups:

- Group 1: state-owned enterprises with certain important role in the economy will be maintained to ensure firmly the vital role in the process of development. This group consist of 100 per cent state-owned and public interest enterprises.
- Group 2: state-owned enterprises which are subject to ownership restructuring and classified into 3 categories (1) enterprises maintaining majority of state shareholding, (2) special shareholding of the State or (3) no state shareholding at all.

During 1998 – 1999, at least 20 per cent of those in group 2 enjoying autonomous or internal accounting regime should be equitized following various modalities in accordance with the Decree 103/1999/ND-CP dated 19 September 1999) such as contractual assignment, sale or lease of state owned enterprises to labourer group or other economic sectors.

- Group 3: state owned enterprises suffering long-lasting losses

On the basis of such classification, ministries and provinces must report to the Government and set up annual and long-term plans and road map of equitization of state-owned enterprises for Group 2.

Equitization of state owned enterprises are implemented in the following forms:

- To issue new shares to attract more investment capital in order to transform state-owned enterprises into joint-stock companies on the basis of maintaining the current value of capital investment hold by the State;
- To sell a part of the current state-invested capital in the enterprise to transform the state-owned enterprise into a joint-stock company;
- To separate a unit from a state-owned enterprise in order to transform it into a joint-stock company;
- To transform the enterprise into a joint-stock company, and

Initial results of the process are:

- Business and production outcomes of joint-stock companies have increased as compared to pre-equitized state owned enterprises;
- Employment and income of the employees have increased.

The role of employees in joint-stock companies and business management methods have been improved significantly. In addition, there are also some other positive impacts in term of inflow of government funds, absorption of non-operating money from different sectors into production and business.

The Objective of equitization plan of Vietnam are:

- To absorb money from the whole society including individuals, foreign and domestic social and economic organizations to invest in technology innovation, employment creation and business enterprise development;
- To reform management methods and create momentum for domestic enterprises to develop their business efficiency as well as incomes of the employees.

Please refer to the answer 20 above for further information.

(b) Monetary and fiscal policies

Question 23.

Vietnam affirms to be willing to gradually making the Dong fully convertible. Could Vietnam provide more information on the time that will be requested for this result to be achieved?

Answer:

The purpose of making the Vietnamese Dong convertible is stipulated in Decree No. 63/1998/ND-CP dated 17 August 1998 of the Government on Foreign Exchange Control.

Decree No. 63/1998/ND-CP has relaxed the control over personal money transfer. Particularly, individuals are allowed to purchase, transfer money abroad for purposes of aids, inherent, tourism, study, operation, medical treatment, club membership and types of fee; foreigners who have legal income in foreign currency are permitted to transfer or bring the money out of the country. If income is in Vietnamese Dong they are permitted convert into foreign currency at the appointed banks.

The Law on Amendment and Supplement of some provisions of Law on Foreign Investment in Vietnam approved by The National Assembly on 16 May 2000 stipulates that foreign invested enterprises and parties to business cooperation contracts (BCC) are allowed to purchase foreign currency in commercial banks to finance current transactions and other kinds of transaction provided by regulations on foreign currency. This regulation replaced the previous restriction by The Law on Foreign Investment in Vietnam which had required foreign invested enterprises to self balance their foreign currency demands (requirements). However, the Vietnamese Government only provides guarantee of balancing foreign currency requirements for certain significant important projects under economic programmes of the government in specific periods. The Vietnamese Government provides the assurance of its assistance to balance the foreign currency requirements of enterprises operating in infrastructure construction and other important projects. In addition, in certain circumstances, subject to the approval of State Bank of Vietnam, foreign invested enterprises are permitted to open bank account abroad in order to meet it's business demands rising from business scope expanded in both domestic and foreign markets (i.e petroleum projects, tourism and international travel projects).

Question 24.

Please clarify how the Production Protection Fund will reduce adverse effects of market fluctuations.

Answer:

Vietnam does not have a Production Protection Fund. Instead it maintained the Price Stabilization Fund, which was set up by the Government of Vietnam in April 1993. This Fund was financed by collection of certain proportions of differences between world market prices and domestic prices caused by an unforeseen price fluctuation. In order to stabilize prices over certain periods, this Fund mainly performed the function of supporting enterprises by covering a part of banks' lending interest rates. That helps these enterprises to prevent their normal business activities from any abrupt change caused by the market price fluctuation. By the end of 1999, the Price Stabilization Fund terminated its operation and the Export Promotion Fund took over its role. The Export Promotion Fund is established pursuant to the Decision No.195/1999/QD-Ttg dated 27 September 1999 of the Prime Minister. This Fund's earnings are charges and fees imposed on exports and imports and other sources in accordance with the Government's regulation. The goal of this Fund is to financially support enterprises producing and trading in exported products to cope with adverse fluctuation of international market prices, improve their competitiveness and to promote exportation.

For further information, please refer to the answer to Question 144.

Question 25.

Would Vietnam please commit to submit to the Working Party the draft decree on fees and charges which contains regulation on the principles and authority to charge fees as soon as it becomes available.

Answer:

On 30 January 1999, the Government of Vietnam issued Decree No.04/1999/ND-CP stipulating charges and fees under national budget. The list of surcharges and fees will be submitted to the Secretariat.

Question 26.

The excise taxes applied to cigarettes and beer are in clear contrast to Article III GATT 94 as they tax differently like products. Please submit to the Working Party a detail plan for the elimination of the existing discrimination.

Answer:

As indicated in Answer 39 of document WT/ACC/VNM/6 (List of exercise rate applied to tobacco and alcohol drink), currently there is still discrimination on exercise rate applied to filter cigarette manufactured substantially by imported materials and those manufactured substantially by domestic materials. However, in case of beer, exercise rate is applied equally between imported and domestic products.

Question 27.

What is the transition period referred to in answer to question 41?

Answer:

The transition period is the interim by which priorities may be granted to enterprises coping with difficulties when the new tax law come into effect enabling them to get along with new tax law which is less favorable than the previous one.

Question 28.

Please note that as long as a specific benefit is granted upon condition that a certain amount of local content is included in the final product, there is an infringement of the Trims Agreement as specified in the annex to the Agreement. Has Vietnam replaced the local content requirement with the local manufacturing one?

Answer:

Vietnam has been implementing adjustments to convert local content requirements in automobile and motorbike manufacturing, household electric appliances into purely local manufacturing requirements.

Question 29.

Has Vietnam decided whether to specify minimum wages for foreign companies in Dong instead of US dollars?

Answer:

Yes, as from 1 July 1999, minimum salaries or wages indicated in the labour contracts of Vietnamese employees working in foreign invested enterprises established and operated under Foreign Investment Law in Vietnam are in Vietnamese Dong.

Question 30.

Please describe the incentive granted to export-oriented companies in order to increase earning foreign currencies?

Answer:

With respect of foreign invested enterprises, in order to encourage these enterprises to produce goods for export, Vietnamese laws and regulations stipulate preferential profit tax (10 per cent, 15 per cent, 20 per cent) and profit tax reduction or exemption (up to 8 years) to be granted to these enterprises subject to export performance. According to the Law on Amendment and Supplement of some provisions of Law on Foreign Investment in Vietnam approved by The National Assembly on 16 May 2000, the phrase "profit tax" is replaced by "corporate income tax"

Foreign invested enterprises are allowed to purchase goods not produced by the enterprise itself except those under list products prohibited from trading for export to increase foreign currency earnings.

For domestic enterprises, in addition to the fact that any enterprise which has business registration certificate is permitted to carry out export-import activities under provisions of Commercial Law and other related regulations, the government has adjusted export tariff rate of nearly most of products to 0 per cent. All Enterprises have the right to access Export Promotion Fund established from January 2000 which is aimed at creating favorable conditions, establishing markets and partially limiting risks for enterprises in export activities.

Value-added tax rate for exports is at 0 per cent applicable to all domestic and foreign invested enterprises. Enterprises are exempted from import duties imposed on materials, inputs for manufacturing exported products.

In addition, the government still maintains other measures to grant more favorable conditions for export activities of enterprises.

Question 31.

We are concerned over the extremely high rate of Vietnam's income tax imposed in individuals. This, in our view, is a major investment disincentive, and the rate for individuals should be reduced.

Answer:

Individual Income Tax Law of Vietnam give more favourable terms to foreigners than to Vietnamese people. On 30 June 1999, the Ordinance providing amendments to some provisions of Income Tax Ordinance has increased trigger point to taxable regular incomes of foreigners from VND 5 million per month to 8 million per month. Meanwhile, Vietnamese peoples monthly income of more than VND 2 million are subject to income taxes. Therefore, income tax system of Vietnam offers foreigners more favourable treatment.

Vietnam began studying and drafting Individual Income Tax under the tax system improvement program – phase two with a view of removing defects in the current tax system. The set-out goals of the program are to ensure appropriate incentives to the labourers as well as it's compatibility to international customs and practices.

(c) Foreign exchange and payments system

Question 32.

The requirement that each foreign company should maintain equilibrium between incoming and outgoing of foreign currencies as prescribed in Article 33 of the Law on Foreign Investment, hinders foreign investors' commercial activities and, as a result, is a major investment disincentive and will dampen a foreign investors' enthusiasm to invest in Vietnam.

Answer:

The regulations requiring foreign invested enterprises to self balance their foreign currency requirements as provided for in the article 33 of the Law on Foreign Investment in Vietnam has been loosened.

The Law on Amendment and Supplement of some provisions of Law on Foreign Investment in Vietnam approved by The National Assembly on 16 May 2000 stipulates that foreign invested enterprises and parties to business cooperation contracts (BCC) are allowed to purchase foreign currency in commercial banks to finance current transactions and other kinds of transaction provided by regulations on foreign currency. This regulation replaces the previous restriction by The Law on Foreign Investment in Vietnam which required foreign invested enterprises to self balance their foreign currency demands. However, the Vietnamese Government only provides the assurance of balancing foreign currency requirements for some significant important projects under development programmes of the government in specific periods. The Vietnamese Government provides the assurance of its assistance to balance the foreign currency requirements of enterprises operating in infrastructure development and other important projects.

While facing critical difficulties in the BOP, assurance of balancing or assistance to balance foreign currency requirements are granted to specific projects which are significantly important or important to the economy specified by the Vietnamese Government. This measure is applied in other countries who also face constraints in foreign exchange reserves.

Over the last few years, the Government has made great efforts to improve the foreign investment climate including the relaxation of requirements on foreign exchange balance. This process has been conducted continuously along with the process of reforming the legal framework on foreign investment since 1990, particularly,

The amended Law on foreign investment in 1990 abolished the requirement on salary/wages for workers made in Vietnam Dong which originated in foreign currencies.

The amended Law on foreign investment in 1992 supplemented a regulation that allows FIEs to pay for services such as electricity and water services in Vietnamese Dong and to collect and purchase goods for export in accordance with the guideline of the Ministry of Trade.

The amended Law on foreign investment in 1992 supplemented enterprises which produce essential import substitutes into a list of enterprises, which are balanced foreign currency requirement by the Government.

The Law on foreign investment in 1996 supplemented important projects into a list of enterprises, which absorb balanced foreign currency requirement by the Government.

Decree No.10/1998/ND-CP dated 23 January 1998 stipulated that enterprises producing exports shall be supported a part of foreign currency demand by the Central Bank of Vietnam within 3 years from the commencing of operation. Enterprises operating in the fields of services (e.g. tourism, hotel and office for rent) shall be considered to buy foreign currency by the Central Bank in accordance with applicable regulations.

Decree no.63/1998/ND-CP dated 17 August 1998 on foreign exchange control and the Circular providing in detail guidelines of the Decree, FIEs and foreign parties to Business Cooperation Contract operating in the areas of office, hotel and hospital business shall be allowed to receive foreign currency from non-residents to pay house and office rental etc.

Most recently, with a view to promote and guarantee foreign investment in Vietnam, the Law on Amendment and Supplement of some provisions of the Law on Foreign Investment in Vietnam approved by The National Assembly on 16 May 2000 has loosened the restrictions on balance of foreign currency requirements as above described.

With the effort to speed up the process of economic development and trade liberalization, Vietnam have been gradually creating better favourable conditions for local and foreign investors in getting borrowings from the bank and loans guarantees, which pave the way for the relax of foreign exchange control and transaction, and widen the list of enterprises subject to be granted the assurance of balancing foreign currency requirements by the Government in the years to come.

Question 33.

Vietnam's answer to Question 17(i) is still unclear. Should we understand that a foreign business entity is allowed to open some accounts in certain branches of authorized banks?

A translation into English of Decree No.63/1998/ND-CP should be provided to the WTO Secretariat for consultation.

Answer:

Pursuant to Decree No 63/1998/ND-CP dated 17 August 1998 on Foreign Exchange Management, issued by the Vietnamese Government:

- Residents who are foreign invested enterprises operating in Vietnam and having revenues from current transactions, capital transactions and other lawful revenues in foreign currencies shall be permitted to open and maintain their account in foreign currencies at authorized banks in Vietnam.
- Non-residents who are foreign economic organizations established and conducting business operations in foreign countries, having foreign currencies which are remitted from overseas through banks and/or carried in upon entry into Vietnam and certified by Customs at border check-point, and/or having other lawful sources of revenue in foreign currencies in Vietnam shall be permitted to open and maintain their account in foreign currencies at authorized banks in Vietnam.

(English version of the Decree No 63/1998-ND-CP in document WT/ACC/VNM/9/Add.1).

Question 34.

Does the State Bank of Vietnam allow foreign business entities to have the right of a foreign exchange conversion priority to convert all Vietnamese Dong into a foreign currency upon request, after having satisfied all the requirements announced by the Ministry of Planning and Investment?

The certificate issued by the State Bank of Vietnam for the right of foreign exchange conversion on a case-by-case basis to foreign business entities not having the right of a foreign exchange conversion priority is unreasonable and should be reconsidered.

A translation into English of Circular No.08/TT-NHNN7, dated 30 September 1998, should be provided to the WTO Secretariat for consultation.

Answer:

The Ministry of Planning and Investment shall annually announce the list of infrastructure projects, other important projects and the list of essential import substitutes, eligible for prioritized access to foreign currencies. Based on those lists, the State Bank of Vietnam shall issue licenses on the rights for foreign currency conversion priority to foreign invested enterprises during the course of their operations.

Please refer to the answer 466 (WT/ACC/VNM/6) for the information on subjects who must sell their foreign currency to commercial banks to be granted foreign currency conversion rights by the government.

Law on Amendment and Supplement of some provisions of Law on Foreign Investment in Vietnam approved by The National Assembly on 16 May 2000 stipulates that foreign invested enterprises and parties to business cooperation contracts (BCC) (without the right for foreign currency conversion priority) are allowed to purchase foreign currency in commercial banks to finance current transactions and other kinds of transaction provided by regulations on foreign currency. However, these enterprises shall not be granted by the Government the right of foreign currency conversion priority and assurance of balancing foreign currency requirements or assistance to balance foreign currency requirements.

(Circular No 08/TT-NHNN7 – document WT/ACC/VNM/9/Add.1.)

Question 35.

Vietnam's answer to Question 17(iii) is again still unclear. Do the Vietnamese authorities currently require any authorization, certificate or licence to make a remittance to abroad, despite Vietnam's answer that there is no provision restricting remittance to abroad of profit?

Answer:

Pursuant to Decree 12/CP, 18 February 1997 issued by Vietnamese Government, providing specific regulation on the implementation of the Law on Foreign Investment in Vietnam: After fulfilling their tax obligations, foreign investors investing in Vietnam shall be permitted to transfer abroad their profits generated from business operations, revenue received from provision of services and transfer of technology, principal and interest payments of foreign loans during their course of operations, invested capital, other sums of money and assets lawfully owned by them.

In order to transfer abroad their profits, foreign investors have to present the following documents to the Bank:

- Financial Statement certified by an audit agency;
- Memorandum of the Board of Directors (or Project Management Unit in the case of business cooperation contracts) on the distribution of profits (or distribution of revenues);
- Certificate of competent tax authorities, which certified that foreign invested enterprise and/or foreign partner to business cooperation contract has fulfilled their tax obligations;
- Statement on liquidation of enterprise and/or business cooperation contract approved by investment licence issuing agency (if foreign investors remit overseas their profits upon termination or dissolution of enterprise).

Question 36.

Please specify what exactly is the reference "No.164" in question 17(v).

Answer:

The reference "No 164" in the answer 17 (v) (WT/ACC/VNM/6) should be corrected as reference No 466 (WT/ACC/VNM/6)

Question 37.

The Vietnamese measures mentioned in (2) to (5) are all, in our view, possibly inconsistent with Article XI and note 8 on Article XVI of the GATS. Vietnam should reconsider these measures.

Answer:

At present, the Vietnamese Government is gradually moving toward liberalization of current transactions, including payment and remittance transactions. The Vietnamese Government shall consider fully liberalizing current transactions when its economic conditions are suitable.

(d) Foreign and domestic investment policies

Question 38.

Regarding Questions 54 and 107 (WT/ACC/VNM/3). Granting a tax preference upon the fulfilment of an export requirement is contrary to WTO provisions, most notably Article 3 of the ASCM Agreement. Could Vietnam please indicate a timeframe for their elimination?

Answer:

The application of preferential profit tax on export performance is an important policy in most developing countries in order to promote export-oriented industries. Vietnam will continue to maintain this policy on the position of a developing country with GNP less than 1,000 USD per capita.

Vietnam is reviewing the existing policy on industrial subsidies by the Government to identify the measures un conformity with the WTO Agreement on Subsidies and Countervailing Measures. The removal of these measures (if any) is subject to the outcomes of accession negotiations of Vietnam.

Question 39.

Please update the Working Party on the elaboration of terms and conditions governing the participation of foreign investors in Vietnam.

Answer:

Please refer to the answer 21.

Question 40.

Can Vietnam provide a time schedule for the abolition of the discrimination in the standard of assessment?

Answer:

The issue of gradual elimination of the discriminatory treatment between domestic and foreign investors was raised in 1996 during the process of the revision of Foreign Investment Law and improvement of legal environment of investment including domestic investment.

Particularly, after the Prime Minister issued Decision No.53/1999/QD-Ttg, a number of investment related fees and charges has been applied equally while the others are being gradually adjusted into a commonly applicable level.

Gradual elimination of the discriminatory investment conditions between domestic and foreign investors is one of the most important issues to be addressed.

Question 41.

Can Vietnam specify when the amount of the transferred capital would be considered “much higher” than the initial and re-invested capital? Why the licence issuing authority should clear the transfer?

Answer:

Article 73, paragraph 3 of Decree No.12/1997/ND-CP stipulated that when transferring money abroad, if the amount is higher than initial invested capital and re-invested capital, the approval from investment licence issuing authority is required. This regulation is aimed at controlling the remittance of the investor only. If such income is legally obtained from investment activities in Vietnam, the investor will be allowed to transfer the amount abroad by investment licence issuing authority regardless if such amount is higher than initial capital and re-invested capital. Examination of legitimacy of the money transferred is used in every country in order to avoid "money laundry" and to find out illegal income which may be veiled behind the appearance of abroad remittance from foreign investments.

Question 42.

Regarding Question 54 of WT/ACC/VNM/6, the aforementioned “Decision of the Minister of Planning and Investment No.229/1998/BKH-QD”, requiring an 80 per cent export performance requirement, should be abolished as soon as possible as it is a major disincentive for foreign investors which also intend to domestic sales.

Answer:

Vietnam is a developing country faced with a lot of difficulties. Therefore, the development policy maintains a certain level of protection in favour of several domestic industries and the development of export activities which create pre-conditions for balancing international payment and export expansion.

Decision 229/1998/BKH dated 29/4/1998 merely applied for foreign investment projects which have been licensed after the effective date of the Decision. Otherwise, the export ratio of 80 per cent of products is accepted by investors on a voluntary basis. Therefore, it does not violate TRIMs.

Vietnam will continue considering the creation of better conditions for foreign investors by gradually phasing out the export requirement ratio and adjust the policy, appropriate to the development needs.

All comments in the question shall be taken into consideration in policy making process.

(e) Competition policies

Question 43.

When a law on competition is expected to be adopted?

Answer:

The drafting of Competition Law is under process. This draft needs to be completed and submitted to the National Assembly soon.

Question 44.

Regarding Question 67 of WT/ACC/VNM/6. The answer to the question should be elaborated on as the current answer is not clear as to exactly what are “certain indirect measures”, “certain business areas” and “the legal framework”. A detailed explanation should be provided backed up with sufficient examples.

Answer:

Article IX, Commercial Law stipulates some provisions related to depraved competition practices subject to prohibition are as follows:

- Business entities are obliged to provide true and accurate information relating to the goods and services which they supply.
- Business entities must be responsible for the lawfulness of the goods which they sell
- Business entities are prohibited from:
 - Inflating or depressing prices to the detriment of producers and consumers;
 - Deceiving or misleading customers;
 - Selling imitation goods;
 - Using deceptive advertisements;
 - Conducting illegal commercial promotion.

Consumers may establish organizations for the purpose of protecting their legitimate rights in accordance with law.

Where their interests are infringed upon, consumers have the right to lodge complaints against business entities with the competent state body to institute court action against business entities in accordance with law.

Although there is not any specific law to regulate competition, many practices are indirectly regulated.

“Legal Framework” in the answer 160 (WT/ACC/VNM/6) means not contrary to provisions of laws and regulations.

III. FRAMEWORK FOR MAKING AND ENFORCING POLICIES AFFECTING FOREIGN TRADE IN GOODS AND TRADE IN SERVICES

1. Power of Executives, Legislative and Juridical Branches of Government

- **National Parliament:**

Question 45.

Will the parliament be involved in the process of the ratification and implementation of the WTO agreement?

Answer:

As stipulated in paragraph 13, Article 84 of the Constitution issued in 1992; Article 12 of the Law of the Organization of National Assembly; The National Assembly is eligible to approve or abrogate international treaties to which Vietnam is a signatory or party proposal by the State President. Paragraph 1, Article 10 of the Ordinance on Conclusion and implementation of an international treaty, International treaties to be approved by the National Assembly include those:

- related to peace, national security, national borders and territory, national sovereignty, basic rights and obligations of the people and legal assistance;

- have provisions which are not conformed to or not yet indicated in the existing legal documents of the National Assembly, Standing Committee of the National Assembly and the State President;
- are related to treasury budget upon proposal by the Government for approval;
- contain requirement for ratification by the National Assembly.

As stipulated in paragraph 2 Article 12 of the Ordinance on Conclusion and Implementation of International Treaties, the State President shall make decision on accession to international plurilateral or multilateral treaties on the behalf of the State, international plurilateral treaty containing provisions which are not in conformity with or not indicated in legal documents of the National Assembly or Standing Committee of National Assembly, international plurilateral treaty containing provision requiring approval by the State President, except those are necessary to be submitted to National Assembly for approval.

Therefore, legal documents for the WTO accession of Vietnam must be ratified prior the implementation in Vietnam. The National Assembly has the right to supervise the implementation of those agreements as well as to issue necessary legal documents to implement those agreements.

Question 46.

Which academic qualifications are required for judges in the Vietnamese courts?

Answer:

Pursuant to the provision of Article 37 of Law on the Organization of the People's Court and Articles No.4, 16, 17, 18 of the Ordinance on Judges and Assessors of the People's Courts, a judge of People's Courts of the Socialist Republic of Vietnam must be titular of Judicial college Diploma or an Bachelor of Law or higher. He may be required to meet other qualifications if so required by law.

Question 47.

The three laws, i.e. the Civil Code, the Commercial law and the law on Economic Contracts "Phap lenh hop dong", regulate civil and commercial contracts. Should we understand that the Civil Code is a general contract law while the Commercial Law and the Law on Economic Contracts are special contract laws? How are such laws applicable to the contracts made between companies in Vietnam, including enterprises with foreign-owned capital?

Answer:

The three laws (the Civil Code, the Commercial law and the law on Economic Contracts) have different objects. Therefore, they have different positions and roles in regulating the relations between products and money in Vietnam.

1. Civil Code regulates civil relations (including contractual civil relations) while the Ordinance on Economic Contracts regulates economic contractual relations. These two relations are existing independently (Economic contractual relation is not an integrated part of civil contractual contract). Therefore, it should not be considered that Civil Code is dominating law on contractual relations and Ordinance on Economic Contracts regulates special contracts (economic contract). In short, the relation between the civil contract and economic contract is not the relation between generality and specificity but two different and equal categories. Therefore, there are Ordinance on Economic Contract (1989) and Ordinance on Civil Contract (which has been replaced by the Civil Code in 1995) existing at the same time in Vietnam; There are economic courts to settle disputes on economic contracts existing in parallel with civil courts to handle civil cases.

2. Relations between the Commercial Law and the Ordinance on Economic Contracts is different from those relations indicated above. According to the Commercial Law, commercial relations are a group or a part of economic relations. Therefore, their relations are the relations between generality and specificity and not equal categories.
3. All business entities in Vietnam, regardless of their ownership, are allowed to conclude economic contracts in accordance with provisions in the Ordinance on Economic Contracts. When concluding commercial contract, business entities must comply with all regulation provided for in the Commercial Law that would enable them to apply provisions of the Ordinance on Economic Contracts to settle arising disputes.

Question 48.

There is some uncertainty over the definition of the term. “official document(s) ‘cong van’ not mentioned in the Law on the Promulgation of Statutory Instruments “Luat Ban hanh van ban qui pham phap luat”. The “official documents” include those that should be categorized as legal documents, e.g.

- (i) **The “Official document regarding temporary postponement to implement the regulation on fund preparation by state-owned enterprises on Article 11 of 59CP (6755-KTTH)” limiting the effects of the relevant government decrees;**
- (ii) **The official interpretive answered by the Government to questions from lower organs of the government relating to the applicability of governmental decrees.**

These “official documents” are rarely published by the official gazette even though they substantively regulate the fundamental rights of the people and companies.

Many of “official documents” include substantively important regulations on the rights of people and companies that should be promulgated, even if not legally required to be promulgated, in order to be recognized widely by both people and companies.

All governmental organs should be obliged to promulgate all “official documents” in order to fulfill the above task. Furthermore, “official documents” which are largely binding should be enacted in the form of a law.

Answer:

Pursuant to the Article 1 of the Law on Promulgation of Legal Documents issued by the National Assembly of the socialist Republic of Vietnam in 12 November 1996 and Article 1 of the Decree 101/CP dated 23 September 1997 providing guidance on implementation of the Law, “official document is not a kind of legal documents so that it shall not be regulated by those two documents above and be publicized on Official Gazette. Otherwise, there has been any legal document providing that documents relating to interests or rights of groups, individuals or companies must be issued in the form of legal document and publicized in the public mass media. Therefore, in reality, in the process of management, sometime and in some places, there will be newly rising issues before administration bodies. That would require a certain appropriate guidance and adjustments through the form of official documents which including those documents in the question 19.

Recently, the government and authorities have been carrying a certain activities in order to gradually adjust policies making process into orderly disciplines. For example, the program of policies, laws and legal document review by the government and the issuance of the Decree 101/CP dated 23 September 1997 providing Guidance on the Law on Promulgation of Legal Documents are to eliminate all current inappropriate or ineffective legal documents; to revise, amend current legal

documents to make them more suitable to reality and jurisdictions; to systemise current legal documents and publicize to make the current policy system more transparent to everybody. However, this work is very difficult and complex which require long time and extreme efforts from the government and related authorities.

Question 49.

Although some major important laws, e.g. the law on Foreign Investment and the Law on Import and Export Custom Duties, do not themselves have any provisions which regulate the main interests of companies, their detailed enforcement regulations and ordinances, which are laid down just before enactment of the laws, include important regulations on the vital interests of companies, e.g. the establishment of a period for applying the preferential rates of the corporation income tax and the abolishment of the schedule of the ordinary customs duties. Substantial amendments brought about by the enforcement of regulations, undermine the significance of the national diet which exclusively exercises its law-making power and, subsequently, has a negative influence on the relevant people and companies.

Answer:

According to the Law on Promulgation of Legal Documents issued by the National Assembly of the socialist Republic of Vietnam in 12 November 1996 and Article 1 of the Decree 101/CP dated 23 September 1997 providing guidance on implementation of the Law, the National Assembly is the only body having the power of making constitution and laws. All legal document issued by lower agencies must be in compliance with higher agencies. Pursuant to paragraph 2, Article 82 of the Law on Promulgation of Legal Documents, in the case of there is a discrepancy between various legal documents on an issue, higher effective legal document shall be applicable. Therefore, if legal documents that were promulgated before the effective date of a law, have provisions contrary to the law, all such contrary provisions will be abolished upon the law comes into effect.

- Division of authority between central and sub-central form of Government

Question 50.

Vietnam states in the response to question 73 of WT/ACC/VNM/6 that the Government is drafting a decree on fees and charges that addresses the rights and sub-central authorities in this area.

Please provide this decree to the Working Party when it is promulgated. Please indicate for the Working Party the nature of the authority or its limits that is addressed in this decree.

Answer:

On 30 January 1999, Vietnamese Government has promulgated the Decree 04/1999/ND-CP on fees and charges. This decree has been publicized on Official Gazette.

With a view to uniformly manage all fees acquired to the government fund, the decree stipulates jurisdictions to regulate fees and charges of authorities such as the Government, Ministry of Finance, People's committees of provinces and cities under central authority. These fees and charges consist of payable fees and charges for the public and administration services.

Question 51.

Can Vietnam confirm that at present, or subsequently in the context of this decree, that sub-central entities have no autonomous authority over issues of subsidies, taxation, trade policy or

any other measures covered by WTO provisions and that Vietnam will apply the provisions of the WTO agreement, including its Protocol of Accession uniformly throughout its customs territory and other territories under its control, including in regions engaging in border trade or frontier traffic, special economic zones, and other areas where special regimes for tariffs, taxes and regulations are established?

Answer:

The assignment of authorisation to different levels of administration is determined by Vietnam's laws. However, Vietnam will ensure the uniform application on its commitments upon accession to WTO.

Question 52.

Does Vietnam's law currently provide that provisions of the international agreements and treaties ratified by the State President or the National Assembly, as Vietnam outlines in the response to question 70, will have the force of law in Vietnam whether or not there is conforming legislation.

Answer:

Most of the legal regulations promulgated by the State of Vietnam e.g. the Civil Code, Commercial Law, Civil Aviation Law stipulate that international treaties being effective and ratified by the State President and the National Assembly shall be applied in the whole territory of Vietnam. The provisions of the above treaties shall prevail in case of in conformity with the Vietnamese regulations.

Question 53.

Can Vietnam confirm that, after accession, when informed of a situation where WTO Provisions are not being applied or are applied in a non-uniform manner, the central authorities will act to enforce WTO provisions without requiring affected parties to petition through the courts?

Answer:

After accession, all such notification will be considered carefully and the Vietnamese Government will implement necessary measures as to carry out its obligations if so required by the WTO regulations and the obligations of Vietnam stipulated in the accession Protocol.

- **Any Legislative Programmes or Plans to Change the regulatory Regime**

Question 54.

Prior to the next Working Party, we would appreciate a list of the legal instruments enacted, in the process of legislative enactment, in draft or being prepared those address WTO issues. This should include information on the WTO issues being addressed, where the legal instrument is in the process of enactment, and the date that Vietnam believes it will be enacted in law.

Please provide copies of all such legal instrument for the Working Party review.

Answer:

Legal regulations which were promulgated, in draft or being drafted, which address WTO issues, has been listed in the legislation program of the 10th session of the National Assembly. Vietnam will provide to the Working Party with this legislation program.

Followings are drafts of Laws and Ordinances addressing WTO which have been adopted among the Laws and Ordinances included in the legislation program of the 10th session of the National Assembly:

- Enterprise Law, promulgated in June 1999;
- Ordinance on Consumers Right Protection; April 1999
- Tourist Ordinance, February 1999;
- Ordinance on commercial bills;
- Ordinance on Goods Quality (revised);
- Ordinance on Measurement (revised).

The following Laws and Ordinances submitted by the Government to the Standing Committee of the National Assembly for consideration in the 2000 legislation program:

- State Enterprise Law;
- Law on Amendment of and Addition to a Number of Articles of the Commercial Law;
- Law on Amendment of and Addition to a Number of Articles of the Law on Foreign Investment in Vietnam;
- Customs Law;
- Insurance Law;
- Bidding Ordinance;
- Ordinance on Fees and Charges;
- Ordinance on entry to, exit from, residence and travel of foreigners in Vietnam (revised);
- Ordinance on plants protection and disease inspection;
- Foods Ordinance.

- **Description of Judicial, Arbitral or Administrative Tribunals or Procedures**

Question 55.

The responses to question 74-78 and 180 of WT/ACC/VNM/6 seem to confirm that traders may appeal administrative decisions on issues covered by the WTO either administratively within the Ministry of Jurisdiction or to an independent tribunal, but not both. Can Vietnam confirm or clarify this situation.

Answer:

According to the provisions of the Ordinance on Procedures of Settlement of Administrative Disputes (OPSAD) adopted by the Standing Committee of the National Assembly of Vietnam on 21/5/1996 and the revised version of this Ordinance issued on 25/12/1998, person in subject is entitled to submit an appeal to an initial competent authorities as stipulated in Articles 19 – 25 of the Law on Complaints and Accusation adopted by the National Assembly on 2/12/1998 before submission of such appeal to an authority of higher level. If the settlement of such appeal is not implemented or not satisfied by the person in subject after expiration of initial settlement duration as stipulated in Article 36 of the Law on Complaints and Accusation, person in subject is entitled to appeal to a higher competent authority according to the Law on Complaints and Accusation or to bring the case to

administrative court according to the above-mentioned OPSAD. The establishment of two separate settlement procedures as referred to above not only allows person in subject to select an appropriate settlement procedure, but also facilitates the settlement in a short time.

Question 56.

We note that most WTO members allow for the full use of administrative appeals prior to recourse to the courts, and that participation in one process doesn't preclude recourse to the other.

This can be useful to the government, in that the issue is thoroughly examined prior to engaging the judicial branch. Does Vietnam intend to review this situation with a view to revising its procedure?

We urge Vietnam, in the context of its accession to consider the advantages of allowing to both avenues of appeal.

Answer:

It is essential that the State should establish different mechanisms of disputes settlement so that person in subject can choose the most suitable mechanism for himself and proper rights and interests of person in subject should be equally and quickly considered in each mechanism. With this view, every country may set up its own dispute settlement mechanism that is appropriate with the development conditions and situation as well as common laws of such country. That is why not all the WTO members have the same disputes settlement mechanism, which "allow full use of administrative appeals prior to recourse to the court".

However, this question has raised an important issue to be considered in the process of administrative and judicial reform in Vietnam at this time.

Question 57.

How many cases have been appealed before the court in accordance with the Law on Complaints and Accusation of 2 December 1998 or the Ordinance on Settlement of Administrative Disputes of 1996/1998?

Answer:

According to statistic information of the Supreme Court, the number of administrative disputes settled from 1996 to 1998 is as follows:

- 1996: handled 17 cases but transferred to 1997 for settlement;
- 1997: settled 88 cases including 17 cases transferred from 1996;
- 1998: settled 282 cases;
- 1999 (first 9 months): settled nearly 400 cases.

IV. POLICIES AFFECTING TRADE IN GOODS

1. Import Regulations

(a) Registration Requirements for engaging in importing

Question 58.

Do changes in the scope of business have to be registered prior to introduction? Is it correct that while Vietnamese companies can import and export all goods, foreign one can only import goods that serve for their investment objectives?

Answer:

Pursuant to provisions of Article 61 of the Investment Law in Vietnam "any change to business objective of an enterprise must be approved by competent authority".

According to provisions of Article 3 and 8 of the Ordinance No.57/1998/ND-CP, Vietnamese traders are only permitted to export and import registered products as indicated in Certificate of Business Registration except those fall in the list of import-export prohibited products

Foreign invested enterprises are exempted from import duties for some items as stipulated in Article 476 of the Foreign Investment Law in Vietnam. Please refer answer 145 for other items serving investment operation of the enterprises are exempted from import duties as provided for in the Law on Export and Import Duties.

Question 59.

Regarding Questions 102 and 104. Please specify to the Working Party those countries, which have "special preferential import tariff agreements" with Vietnam. detail what special privileges above MFN status these agreements entail, and list for each country enjoying such preferential of "special" status the products (s) or sector (s) these agreements cover. Finally, please detail to the Working Party what percentage of overall trade with each of the preferred/special countries is covered by the special preferential import tariff agreement.

Answer:

At present, special preferential import tariff of Vietnam is applicable to ASEAN countries and European Union .

For ASEAN countries: in order to promote ASEAN free trade area (AFTA), Vietnam committed to grant special preferential import tariff to ASEAN countries under CEPT/AFTA program. The ASEAN regional agreements have been already submitted to WTO by ASEAN Secretariat under Article 24 of GATT 1994.

For EU countries: According to the Trade Agreement on Textile and Clothing between Vietnam and EU, Vietnam must reduce tariff on a number of EU textile products imported to Vietnam during the period of 10 years starting at 1st January, 1996. On the other hand, EU committed to increase import quota for Vietnamese textile products.

Question 60.

Does Vietnam allow both foreign and domestic individuals to import for their own use? For resale to other individuals or firms? If so what are the criteria? If not, when does Vietnam plan to extend trading rights to include individuals?

Answer:

Both foreign and domestic individuals are allowed to import goods, which are not subject to import restriction, for their own use by non-trade mean. Such imports are subject to the same taxation system as that applied to goods imported by trade mean.

Imports of the goods subject to QR or non-automatic licensing system shall depend on import licensing on case by case basis. After completing import procedures, the owner of the imported goods is permitted to sale those goods to the others.

According to relevant regulations, only legal entities are permitted to import goods, by trade mean, for business purposes. Individuals may establish private enterprise to obtain legal entity status in order to enjoy the said right.

Question 61.

What are requirements for a firm registered to manufacture in Vietnam to alter its registration to include the right to trade? Which Ministry is responsible? What criteria are applied?

Answer:

100 per cent Vietnamese owned enterprises are entitled to import and export goods in accordance with the provisions in their Business Registration Certificate. When intending to amend the Business Registration Certificate for additional import-export trading right, the above enterprises have to apply with local Department of Planning and Investment, National Corporations belonging to the Government also have to comply with the same procedure but application shall be submitted to the Ministry of Planning and Investment.

With respect to goods and sectors requiring conditional licensing, the application of the above enterprises shall be approved in a short time when respective conditions are met.

Upon granting investment licence, foreign invested enterprises (FIE) are permitted to import those goods as stipulated in their investment licenses for their manufacturing and business purpose upon granting investment licence. FIE are not permitted to import goods for distribution in Vietnam. FIE are permitted to purchase goods in Vietnam except for those listed in the Annex 2 attached herewith for export.

Question 62.

Vietnam state that it does not encourage foreign investment in pure trading without local production or manufacturing base. This policy appears to preclude foreign companies from importing and exporting products other than importing of inputs or exportation after processing. Are whole foreign-owned companies allowed to participate in trading activities for marketing or re-sale?

Answer:

Please refer to the answer to Question 80 of WT/ACC/VNM/6.

Question 63.

Can foreign joint-venture businesses obtain licenses to import in exactly the same way as domestically owned enterprises?

Answer:

No, foreign joint venture enterprises are permitted to import those goods as stipulated in their investment licenses for their manufacturing and business purpose. Local enterprises are permitted to import goods in accordance with the provisions in their Business Registration Certificates except for the goods subject to prohibition and conditional import regulations.

Question 64.

Do any foreign-owned trading enterprises exist in Vietnam? If not, when does Vietnam plan to allow foreign owned trading companies?

Answer:

Currently, there is not any wholly foreign owned enterprises involving in trading in Vietnam because this activity is not encouraged by the Law on Foreign Investment in Vietnam.

According to Article 39 of the Commercial Law of Vietnam, branches of foreign traders are permitted to be established under decision of the Government of Vietnam. However, the Government of Vietnam still has not allowed to establish foreign trading branches so far.

Question 65.

Vietnam states that with regard to the fields which foreign investments are conditional, the investor has to meet certain criteria as defined by the State. Once investment Licence has been awarded, these enterprises can import, export goods which serve their investment objectives as specified in the investment licence.”

Does a foreign invested firm have the right to import for their own use, e.g. in manufacturing? Can they register to import for further distribution?

Answer:

Foreign invested enterprises are entitled to import goods for their manufacturing and business objective in accordance with the provisions in their investments and are not permitted to import goods for distribution in Vietnam.

Question 66.

Vietnam lists a variety of goods which foreign invested enterprises are prohibited from importing. The list of exception to trading rights is very long. While these products are currently listed at four digits HS level, we request that Vietnam provide a complete list with the goods corresponding HS categories at six or eight digits, depending on the scope of the requirement. We understand that this list cover an extensive amount of goods, but it is necessary in order to thoroughly determine Vietnam’s compliance with the rules of the WTO.

Answer:

Currently the above-mentioned list is provided at four digits HS level and including all tariff lines at six digits under such headings. More details on the exceptions are not available. Vietnam will try its best to provide a list at more detailed HS level as required by the WTO members.

Question 67.

Concerning the response in WT/ACC/VNM/6 to question 150, we note that all items designated to be of special importance to the national economy are limited to import by” specialized business enterprises”. Vietnam has confirmed that Annex 3 of WT/ACC/VNM/3/Add.1 contains all possible items that fall under the category of “special importance to the national economy” Can Vietnam provide information on the frequency and procedure of adding and deleting items to/from this list? On what timetable does Vietnam intend on open its import market and provide equal trading rights for these items to all importers equally?

Answer:

Required information will be provided as soon as it is available.

Question 68.

Vietnam states in question 79 that “ the Vietnamese Government does not limit or otherwise intervene in the scope of business as opted by Vietnamese enterprises.” Later in the same paragraph, Vietnam states that “ other than the prohibitive fields, the founders of the enterprises are free to define the scope of their business.” Does this mean 100 per cent wholly owned Vietnamese enterprises are automatically issued foreign trading rights on request? If not what criteria, other than listed in the reply to question 79, need to be met?

Answer:

Except for prohibited sectors, 100 per cent Vietnamese owned enterprises are entitled to determine their scope of activities by their own discretion. Registration in conditional business sectors must satisfy respective conditions, which are publicly promulgated.

Question 69.

Concerning the response in WT/ACC/VNM/6 to question 162, we applaud Vietnam’s decision to eliminate the import-export Business Licence by virtue of Government Decree No 57/1998/ND-CP dated 31 July 1998 which was effective 1 September 1998. However, only 100 per cent wholly-owned Vietnamese enterprises are not limited in their scope of business. Does this mean that for the importation of the same goods, a non-100 per cent Vietnamese owned firm would need an import licence whereas the 100 per cent Vietnamese owned firm would not? If so this policy violates the national treatment principles of the WTO.

Answer:

The Vietnamese laws currently stipulate some restrictions in trading right including import trading right of foreign enterprises. Vietnam will provide information on current restriction policy for the purpose of transparency

(b) Characteristics of national tariff

Question 70.

Regarding Question 89. Is it confirmed that the HS Convention will come into force in Vietnam on 1 January 2000?

Answer:

Harmonized System Convention came into force from 1 January 2000 in Vietnam. However, as a developing country, Vietnam will fully comply with the HS Convention within 5-year period as of 1 January 2000.

Question 71.

Please provide an electronic version of Vietnam's current tariff schedule through the Working Party on Vietnam prior to the next working party.

Answer:

As mentioned before, Vietnam's current tariff schedule is established basically corresponding to HS96 at 6 digits level and Vietnam is together with ASEAN countries establishing ASEAN tariff schedule (AHTN) corresponding to HS96. Thus, we can confirm that Vietnam is actively carrying out technical preparation appropriate with economic situation and management ability so as to implement AHTN and HS96 in a short time. However, Vietnam is entitled to enjoy 3 years of transition period for implementing of HS Convention. As the tariff codes of current Vietnam's tariff schedule are amended currently, the software schedule is not available at this time for providing to the Working Party.

Question 72.

Please provide the Working Party with a specific timeframe in which a tariff schedule based on HS 96 nomenclature will be implemented.

Answer:

Please refer to the answer to Question 71 above.

Question 73.

Per the response to the question 88 of WT/ACC/VNM/6, we seek information as soon as possible from Vietnam, and if possible prior to the next Working Party, on how Vietnam's tariff reform process will affect autos, including what new tariff rates can be expected on automobiles and automobile parts

Answer:

Since issuance of the import and export tariff schedule together with Decision No. 1803/1998/QD/BTC dated 11/12/1998 which came into effect from 1/1/1999 up to now, there is no change in import tariff rate imposed on automobiles and automobiles parts.

Question 74.

The response to question 88 of WT/ACC/VNM/6 state that Vietnam's import statistic by products and by tariff lines for the year 1997 are not yet available. When does Vietnam anticipate this information be available?

Answer:

Official data on Vietnam's international merchandise trade statistics of 1997 were compiled and disseminated by General Department of Statistic in April 1999. Detailed data on each imported commodity by 6 digit HS code in electronic version will be provided upon specific request.

Question 75.

Per the response to question 102 of WT/ACC/VNM/6, please clarify the following point on tariff changes under the Export-Import Tariff Law: Vietnam states that goods will be subject to additional import duties in the case that goods originating from the countries which discriminate goods originating from Vietnam on the basis of tariffs or other measures. What other measures is Vietnam referring to beside discriminatory tariff?

Answer:

According to the current Law on import and export tariff, Vietnam may impose additional import duty for goods originating from the countries which discriminate goods originating from Vietnam on the basis of tariff or other measures. "Other discriminatory treatment measures" may be any measure which another country applied for discriminatory purpose in order to cause barrier to Vietnamese originated goods to that country's market.

For the goods originating from the countries which discriminate goods originating from Vietnam, Vietnam may apply other trade measures (detailed regulation is not available now) apart from additional import duty on case by case basis and depending on how serious is the discriminatory treatment imposed by other countries on the goods originating from Vietnam.

Question 76.

Vietnam is in the process of amending its customs duties in accordance with the conditions indicated by the IMF. The current situation, together with the detailed action-plan for amending customs duties, should be informed. Is the new customs regime consistent with the WTO Agreement?

Answer:

The tariff schedule of Vietnam has been modified by the Ministry of Finance. It is expected to complete the new tariff schedule in correspondence with HS Convention.

With respect to customs valuation, the current valuation system of Vietnam will be changed gradually to be in conformity with the GATT Valuation Agreement in the coming years. It means that Vietnam will include the valuation principle and methods of CVA in Customs Law, at the same time, the number of commodity groups subject to minimum price for customs valuation will be reduced and finally eliminated.

Question 77.

Should we understand that Annex 4 of WT/ACC/VNM/6/Add.1 is the exhaustive list of items subject to export duties? If not, such exhaustive list should be provided.

Answer:

The Annex 4 of WT/ACC/VNM/6/Add.1 is the current exhaustive list of commodities subject to export duties.

(d) Other duties and charges, specifying any charges for services rendered

Question 78.

Has Vietnam completed the study on the implementation of fees and charges compatible with WTO rules?

Answer:

On 30 January 1999, Vietnamese Government promulgated Decree No.04/1999/ND-CP on fees, surcharges under national budget. The Decree was built to uniformly manage on fees and surcharges and to ensure soundness and legitimacy of all kinds of fees and surcharges. According to the Decree, authorities at central level including the Government, Ministry of Finance and local level authorities which are provincial people's Committees are responsible of state management on fees and surcharges.

To implement the Decree No.01/1999/ND-CP above, Ministry of Finance collaborated with other ministries, agencies under the government and People's Committee of provinces and cities under central control to examine and supervise the compliance of these and other authorities in all aspects of implementation of the decree such as jurisdiction and basis for issuance of documents by competent agencies to provide in details rates, collection organization, use and management of collected funds. The above process is ongoing. Ministry of Finance has promulgated several decisions on fees and surcharges tariff and mechanism for managing fees and surcharges collection in fields of food safety and hygiene; plant protection and quarantine; health care, fishery sources protection and fees for issuance of certificate of technical examination and quality of vehicle means.

Question 79.

Please provide a detailed action plan for the elimination of the import surcharge before the accession to the WTO.

Answer:

Both applicable import surcharges and tariff will be issued in market access negotiation in the context of WTO accession of Vietnam.

Question 80.

What is the market price whose fluctuation over 20 per cent determines the increase of the "customs fees". How this practice can be deemed consistent with Article VIII GATT 94?

Answer:

Customs fees are stipulated in Circular No. 31/TTLB/BTC-TCHQ dated 7th April 1993. According to this circular, when the market price fluctuates over 20 per cent (price index is equal to inflation rate), Ministry of Finance in collaboration with General Department of Customs of Vietnam will adjust the customs fees in compliance with the situation accordingly.

This practice is consistent with Article VIII GATT 94 It's goal is to compensate the loss caused by price fluctuation to recover the cost of services rendered by Customs Administration.

Question 81.

Please provide the text of legislation that cover Vietnam "custom fees". Please include the administrative "guidelines" that are used to adjust these fees.

Answer:

Current legal documents stipulating fees and charges under State budget include:

- Decree No.16/1999/ND-CP dated 27 March 1999 of Government stipulating customs procedure and customs charges.
- Decree No. 04/1999/ND-CP dated 30 January 1999 of Government stipulating fees and charges under State budget.
- Circular No. 54/1999/TT-BTC dated 10 May 1999 of the Ministry of Finance guiding the implementation of Decree No.04/1999/ND-CP.

General Department of Customs is co-ordinating with other state competent authorities to promulgate legal documents stipulating in details customs charges in accordance with the above-mentioned legal documents.

Question 82.

Per response to question 111 of WT/ACC/VNM/6 and the information in Annex 1 and 2 of document WT/ACC/VNM/6/Add.1, Vietnam has list the level of each fee except for the fee for "goods sealing" as mentioned in Vietnam's answer to question 230 (in WT/ACC/VNM/3). Please provide all fee for "goods sealing". Also please provide the Working Party members with a description of the accompanying services rendered for each of the fees listed in Annex 1 and 2 of document WT/ACC/VNM/6/Add.1.

Answer:

The Government has just issued Decree No. 04/1999/ND-CP dated 30/1/1999 on fees, charges under state budget. Vietnam can provide required information only after issuance of legal documents stipulating customs charges in details.

Question 83.

In the response to question 112 of WT/ACC/VNM/6, Vietnam referred to a list of a sensitive agricultural products that have 23 tariff lines (at 6 digit level) which "will be totally phased in the inclusion list by the years 2013 with final bound rate of 5 per cent". In response to Working Party questions on this list, Vietnam has referred Working Party members to its commitments under the Agreement on Common Effective Preferential Tariff (CEPT) implementing the ASEAN Free Trade Area. Further, the WTO has been notified of this agreement in accordance

with to Article XXIV of the GATT. However, it is not made clear in this statement if concerns by the Working Party have been adequately addressed.

Has Vietnam provided a copy of this list to the members of the Working Party?

Is there any overlapping of products on this list with products on the different lists Vietnam has already provided (in WT/ACC/VNM/3/Add.1), like the list in Appendix 7 (list 1: Products Subject to line management and list 2: Products Subject to Import Restriction)?

Answer:

Before 1995, sensitive unprocessed and high sensitive agricultural products were not included in CEPT/AFTA. After 1995, ASEAN decided to include these products in the tariff reduction program under CEPT/AFTA. Since that time, ASEAN countries have established a special mechanism for tariff reduction and elimination of NTBs imposed on the above-said products. In 9/1999, the Protocol on special agreement on sensitive and high sensitive agricultural products was signed (31st AEM), according to which, Vietnam committed to reduce tariff rate for such products to 0-5 per cent by 2013.

Due to the splitting of tariff codes in the process of establishment and completion of tariff schedule, total tariff lines covering the list of sensitive agricultural products of Vietnam are 51, in which the following commodities are identical with those listed in Annex 7 of WT/ACC/VNM/3/Add.1:

List 1: Tariff line: 0407 00 10

Commodities group: 0602

List 2: Tariff lines: 1701 11 00, 1701 91 00, 1701 99 10, 1701, 99 90

Question 84.

Can Vietnam confirm that it intends to bind sensitive agricultural products at 5 per cent by the year 2013?

Answer:

Vietnam will fulfill properly her obligations of an ASEAN member. As the WTO members may be aware, the above regional commitments shall only be effective on reciprocity basis between members signing the same regional agreement. They are applied on non-MFN basis to outside countries under the provisions of Article XXIV of GATT.

Question 85.

The higher fees for fundamental infrastructure in Vietnam in comparison to that in other countries, diminish the value of the Vietnam's labour competitiveness, e.g. the fee for Saigon Port is approximately three times higher than that of Bangkok Port. We request that the fees be drastically reduced in order to increase foreign investment in Vietnam.

Answer:

Vietnam will take this comment for reference in the process of policy making and implementation.

(e) **Quantitative import restrictions, including prohibitions, quotas and licensing systems**

Question 86.

Regarding Question 15. Please specify when Vietnam intends to dismantle its current system of import and export quotas in accordance with GATT 94 rules.

Answer:

Over the last few years, Vietnam has significantly eliminated almost all items subject to import and export quotas. Please refer to Annex 1 on Non-tariff barriers attached herewith.

As from 2000, Vietnam begin remove or loosen certain existing quantitative restrictions. The follow up steps will, however, be subject to the practical impacts on domestic industry.

Question 87.

We seek from Vietnam the commitment that, upon accession to the WTO, it will only maintain those import restrictions that are justified under WTO rules. We would also like to note that import quotas are not justified under WTO rules. Could Vietnam provide a clear timetable for the elimination of those measures that are inconsistent with WTO rules?

Answer:

Please refer to the answer 86

Question 88.

It will be useful if Vietnam could submit a table of the goods currently subject to any type of import restriction specifying the HS number of the good and the WTO justification for the restriction.

Answer:

List of products being subject to import restrictions is provided in Annex 1 of this document. HS code for products in this list is not available. Please refer to the answer 86.

Question 89.

We seek a report from Vietnam, for circulation prior to the next Working Party meeting, detailing the current status of all quotas, bans, prohibitions, and other quantitative restrictions on imports and its plans for the removal in the context of WTO accession.

Answer:

In addition to the commodities listed in WT/ACC/VNM/3/Add.1, the import prohibition list of Vietnam is amended with the following commodities: narcotics, reactionary and depraved cultural products, morally pernicious toys, firecrackers (except for signal-fire used for maritime safe purpose and other purposes as required properly by the Prime Minister), cigarettes, left-hand automobile, products made from materials under amphibole group, second hand internal combustion engine under 30 CV.

The following commodities are subject to import licensing: gasoline, fertilizer, 2 wheel, 3 wheel-motorcycle and completed components, electric fan used in family, ceramic and granite tiles,

porcelain, ceramic and glass consumer goods including sanitary wares, packaging finished plastic products made from finished plastic, non-completed frames of 2, 3-wheel motorcycle, NaOH liquid, bicycles, refined vegetable oil, DOP, clinker, black cement, refined and raw sugar, automobile, some types of construction steel, various kinds of papers, 1,5 mm - 7 mm white and clear floating glass.

Quota is imposed on gasoline, fertilizer, construction glasses, spirits of more than 30o.

The elimination schedule of the above restrictions will be listed in the Initial Offer in goods.

Please see the attached Annex 1 for more details

Question 90.

In the context of providing this report, we request that Vietnam provide a single comprehensive, consolidated list of its current quantitative import restrictions, including all bans, quotas, and restrictive licensing requirements. Vietnam should provide information on import quotas for the years after 1995.

Answer:

Please refer to the answer 89.

Question 91.

Please detail which products have been removed from Vietnam's quantitative restriction list as well as any that remain subject to the restriction.

Answer:

Concerning Vietnam's current quantitative restriction list, please refer to the answer 93. Products which have been removed from quantitative restriction list notified in WT/ACC/VNM/3 consists of: certain kinds of cements, second-hand clothes, remnants, aircraft gear-box.

Question 92.

Please provide the HS number, description, the type of restrictions, and the agency or Ministry responsible for control of these goods.

Answer:

Please refer to Annex 1 attached hereby.

Question 93.

Vietnam should also provide for each measure currently in place a timetable for its elimination or revision to a specific WTO consistent alternative, or appropriate WTO justification for retention of the measure.

Answer:

Please refer to the answer 89.

Other details will be notified promptly after the programmes of adjusting trade policy measures being completed.

Question 94.

Regarding Questions 86 and 87 in WT/ACC/VNM/6, Could Vietnam elaborate on what factors will be taken into account when making decisions regarding the extent and duration of each import restriction?

Answer:

The extent and duration of import restriction of Vietnam are decided depending on Vietnam's economic development objectives and the improvement of domestic enterprises' competitiveness to respective imports in economic transitional period. During this period, Vietnam will gradually move the import restriction in line of WTO regulations.

Question 95.

Please include in this list “depraved and reactionary cultural products, morally pernicious toys, some used consumer goods, right hand drive vehicles” and any other prohibited items not formerly included.

Answer:

Technically, it is impossible to describe shapes, circumstances of injury causing, violence excitement or other bad consequences of a particular product. Products: toys in shape of weapons, pictures and photographs, films which may excite violence or sex have to be approved on case by case basis.

Question 96.

Can Vietnam provide a list of all products which it considers “culturally illegal” and “morally pernicious” in an effort to provide importers with more information on Vietnam's import regime? Also please provide clarification on what Vietnam considers a “toy” (i.e firecrackers and guns are not generally considered “toy”). For those products listed as “toys” please indicate if they are plastic, wooden, etc.

Would Vietnam please provide a comprehensive list of all “toys and cultural products” covered by its import prohibition policy? When will HS codes for these products be available for Working Party members's review?

Answer:

Please refer to the answer 95

Question 97.

Concerning the response in WT/ACC/VNM/6 to question 122, what is the “general mechanism” that Vietnam applies to all consumer goods?

Vietnam states that consumer goods, including milk powder and condensed milk, “are subject to Ministry of Health's inspection for the purpose of food hygiene and safety standards. They are not subject to any other import restriction measure.” What are the standards the Ministry of Health uses to inspect food and check its hygiene? Does Vietnam define “hygiene” in this context based on scientific standards?

Answer:

The “general mechanism” applicable to all consumer goods which have effect to health, production and environment is as follows: the producer must publish specifications of their products by registering at competent institutions (according to the Act of Quality of Goods); when exported or imported these goods are subject to inspection by the appointed institutions.

Consumer goods, including milk powder and condensed milk in annual Registration list established by Ministry of Health and the list of imported and exported foods subject to inspection established by Ministry of Science, Technology and Environment must be checked for hygiene and safety to protect consumers. They are not subject to any other import restriction measure.

Vietnamese Standards (TCVN), hygiene and safety requirements established by Ministry of Health (Decision 867/1998/QĐ-BYT dated 4/4/1998) and Codex standard are used where appropriate.

The hygiene and safety standards of Vietnam based on the standards of Codex and other developing countries.

Information concerning TBT, SPS are available at respective agencies.

Question 98.

Vietnam has stated that its list of prohibited imported goods is “ subject to prior approval from the Prime Minister on a case-by-case basis”. Is there a process, including a call for comments, that supports the Prime Minister’s decision? Are importers granted access to the Prime Minister’s Approval process?

Answer:

Prime Minister approves imports or export under the list of prohibited imported goods based on consultation with relevant Ministries. Importers could reflect their ideas to the organism in charge (for example: Ministries, Provincial People’s Committee). But they do not have direct access to the Prime Minister’s Approval process.

Question 99.

Vietnam states “that local manufacturers are not allowed to produce arms and toxic chemicals if approval from the Prime Minister is not obtained.” Vietnam also states that “ the restrictions referred to in the question are only applied to imports”. This latter statement seems to contradict the former. Are such restrictions, in fact, only applied to imports, or do they apply to the same goods domestically produced? if not such restrictions need to be uniform in application. Does Vietnam have any domestic producers of these products?

Answer:

The production of above mentioned products have to be licensed by competent agency subject to the product’s nature, utility and toxic effects.

Question 100.

Concerning the response in WT/ACC/VNM/6 to question 129, we appreciate Vietnam’s inclusion of Annex 5 in WT/ACC/VNM/6 which clarifies previous Working Party questions regarding Annex 3 to WT/ACC/VNM/3/Add.1 which lists goods subject to import licenses. Beside import licensing, are consumer goods subjects to any other form of restriction?

Answer:

Recently, in addition to import licensing system applicable to consumer items, (please refer to Annex 1 for updated list of goods subject to import licensing) enterprises importing consumer items are also required to self balance their demand for foreign currency and not allowed to use deferred payment.

Question 101.

Concerning the response in WT/ACC/VNM/6 to question 130, at what time does Vietnam apply “time-limited restriction in agriculture?” Can Vietnam list all agricultural products that would be subject to additional import restrictions?

Answer:

As soon as trade policy adjustment programmes finished, the above information will be submitted to the Members.

Question 102.

Concerning the response in WT/ACC/VNM/6 to question 137, we note that Vietnam has confirmed that it does not prohibit the import of pharmaceuticals, and that Vietnam updates annually its list of import prohibited goods. Can Vietnam provide the Working Party with a list of drugs it considers “narcotics”?

Answer:

Please refer to Annex 3 attached hereafter.

Question 103.

Concerning the response in WT/ACC/VNM/6 to question 143, does Vietnam have a time-frame for the removal of import restriction on vehicles?

Answer:

Up to now, time to remove import restriction on car has not been determined. Requested information will be submitted to the Working Party as soon as possible.

Question 104.

Concerning response in WT/ACC/VNM/6 to question 153, when does Vietnam anticipate having an applicable table listing items subject to import licensing that is more permanent than the current list in WT/ACC/VNM/3/Add.1, Annex 3? Please provide the corresponding Harmonized Tariff Schedule numbers for the items listed either in the aforementioned document, or the new document replacing WT/ACC/VNM/3/Add.1, Annex 3?

Answer:

Vietnam recognize the need of improving import licensing mechanism and updating information as soon as possible.

Vietnam will supply respective HS code of products under above list as soon as Nomenclature of Import – Export as per HS 1996 is published.

Question 105.

Concerning the response to question 157 (WT/ACC/VNM/6), please list the international environmental conventions Vietnam is a party to, and the rules and standards it specifically applies when requiring licenses on unprocessed wood and forestry products?

Please further explain the rationale behind the licence requirement for the import of "complete equipment for forestry production and wood processing industry" based on "management of quality and standards of imported technology"?

Answer:

List of international conventions on environment to which Vietnam is a signatory:

- Convention on World Cultural Heritage and Natural Resources Conservation signed on 19 October 1987;
- Convention on Wetland of International importance, especially of Waterfowls Habitat (Ramsar), signed on 20 January 1989;
- Convention on International Trade in Endangered Species of Wild Flora and Fauna (CITES), signed 20 January 1994;
- Protocol on Ozone destructive substances;
- The Framework Convention on Climate Change, signed on 16 November 1994;
- Convention on Biological Diversity (CBD), signed on 16 November 1994;
- Convention on Marine Law, signed in 1994;
- Basel Convention on controlling the transit and disposal of dangerous waste, signed 1995;
- Convention on Combat Desertification (CCD), signed on 23 July 1998.

Regulations as well as specific criteria that Vietnam applies when granting licence to unprocessed wooden products and forestry products:

Vietnam encouraged export of planting forestry products (including logs); simultaneously applies necessary measures to assure that forests will regenerate, recover to keep the bio-environment balanced.

Enterprises are allowed to process, export parts and whole of wooden art products and well processed products using domestic natural forestry wood or import of raw wood. The following natural forestry wooden products are allowed to export: components of wooden art products, completely processed wooden products including wooden furniture indoor and outdoor decoration, products for construction works, specialized products (medical, sport and education instruments) or natural forestry products combined with other materials such as bamboo, plastic, mineral and glass.

In term of wood types, excluding category 1A (including *Calocedrus macrolepis*, *Taxus chinensis*, *Cephalotaxus fortunei*, *Podocarpus neriifolius*, *Pinus kwangtungensis*, *Pinus dalatensis*, *Glyptostrobus pensilis*, *Keteleeria calcarea*, *Amentotaxus argotenia*, *Abies nukiangensis*, *Aquilaria crassna*, *Cupressus torulosa*, *Ducampopinus krempfi*), the products listed above are made of wood of group from 8 to 1 produced for export (Wood List was established in Decision No 2198/CNR dated 26/11/1997 by Ministry of Forestry, which currently is Ministry of Agriculture and Rural Development).

The above products when exported must still be under management according to wood export quota every year specified for enterprises in Section 1 Article 5 of Decision No 65/1998/QD-TTg.

While Quality, Hygienic and Work Safety Monitoring Systems... have not been fully established, these requirements are examined in many stages including import licensing..

(f) Licensing Procedures

Question 106.

Concerning the response in WT/ACC/VNM/6 to question 152, we note Vietnam's commitment to implement the proper reforms to meet the WTO requirements on involving not more than three (3) administrative bodies involved in licensing. However, Article I:6 of the Agreement on Import Licensing Procedures that there should be only one body, and not more than three if "strictly indispensable"

Why is it "strictly indispensable" that there be three such bodies in Vietnam? What is the specific timetable for implementing this reform in order to make Vietnam compliant with the Agreement on Import Licensing Procedures?

Answer:

The simplification of import licensing procedure has made some significant progress. Vietnam will continue this process, and simultaneously continue to update the information.

Question 107.

We seek from Vietnam the commitment that, upon accession to the WTO, it will only maintain import-licensing procedures that are full conformity with WTO rules. Could Vietnam provide a clear timetable for the implementation of measures that are consistent with WTO rules?

Answer:

Please refer to the answer No.158 (WT/ACC/VNM/6) and document WT/ACC/VNM/3/add.1 and the answer 112 herewith.

Question 108.

Regarding Question 149. Could Vietnam update the Working Party on the reform of the merchandise licensing system?

Answer:

Please refer to Annex 1 and to the answer 58 herewith.

Question 109.

Regarding Question 164. We comment Vietnam on the engagement to respect GATT rules on the freedom of transit and on transit fees upon accession. We would be grateful if Vietnam could submit a detailed action plan on the implementation of the relevant rules. Would Vietnam also explain to the Working Party what has superseded the transit fees of 1 per cent of the value of the goods mentioned in its answer to this question?

Answer:

Please refer to the answer 111.

Question 110.

Concerning the response to question 158 (WT/ACC/VNM/6)?

Please provide the Working Party with an accurate implementation schedule of the new tariffs, and the tariff lines for which import-licensing requirements will be removed. Further, does Vietnam have any plans to reduce and/or phase-out its import licensing requirements in order to further liberalize trade?

Answer:

Vietnam takes note of the request and will supply this schedule as soon as possible.

Question 111.

Concerning the response to question 164, Vietnam stated that "the rate of 1 per cent previously mentioned has been superseded"

Has this fee been superseded by another fee? If so, how much is this fee , and what services or administrative expenses are associated with it? If the old fee has been superseded by something other than a fee, please explain what it is and what its purpose is?

Answer:

Government has just issued Decree No.04/1999/ND-CP dated 30 January 1999 on fees, surcharges under national budget (Please see the attached list for all applicable fees and surcharges). However, the formulation of detailed regulations on custom surcharges and fees is underway. After issuing, the above mentioned information will be submitted.

Question 112.

Concerning the answer to question 165, Vietnam states in Annex 3 of WT/ACC/VNM/3/Add.1 that it "has already established an Administrative Court. In the future, it is certain that importers shall have the right to make a claim at the Administrative Court. Currently the Court has started receiving claims against decisions of Customs Offices"

This statement implies that currently importers cannot be certain that they can voice their claims on the denial of import licenses. When will this Court be fully operational and certain to hear all cases involving the denial of import licenses? Is there a legal obligation to issue the licence within a certain time limit?

Answer:

Please refer to the answer 74, 75 and 77 of the document of WT/ACC/VNM/6.

Decision No. 0385/QD/BTM dated 28 March 1998 stipulates administrative procedures of Ministry of Trade which specifies different time periods of giving response to a duly complete dossier and/or guidelines to incomplete ones, but not exceeding 10 working days.

Question 113.

Concerning the response to question 166 , of all the goods that have been imported into Vietnam in 1997 and 98, what is the proportion of those goods for which an import licence was required? We note that importers do not have to pay to obtain an import licence.

Answer:

Import licensing procedures are provided in the Annex 3 (WT/ACC/VNM/6). Other categories not mentioned therein can be imported upon completion of custom formalities. The current Vietnam's statistic system does not allow detailed answers to the requirements.

Question 114.

Concerning response to question 167, after changes are made to import licensing procedures, how many days prior to entering into force are they published?

Answer:

Vietnam Law specifies that law-regulating documents by the Government, the Prime Minister, Ministers, Heads of Ministry-equivalent Organs, Head of Governmental Agencies become effective 15 days after the date when such documents are signed or in a later date if specified in the documents themselves.

Legal documents must be sent to related Central or local organizations and organs within 2 days from the signing date to be widely publicized. Law-regulating documents promulgated by Governmental Bodies shall be published the "Official Gazette" within at least 15 days from the issuance or publication date. Law-regulating documents declared in Official Gazettes retain original value. Therefore those documents will be publicized at least 10 days before enforcement date and must be publicized in Official Gazettes before becoming effective.

Question 115.

Concerning response to question 169, are there any other criteria which must be respected besides ability, first-come-first-serve principle, and past performance before an enterprises is granted a merchandise licence? What is the period of licence validity?

When does Vietnam intend to submit its Import Licensing Agreement Questionnaire to the Working Party?

Answer:

Please refer to Annex 3 (WT/ACC/VNM/3/Add.1) providing necessary information about the issuance of importing licenses according to secretariat format WTO.

Annex 3 is constructed to meet the requirement of the questionnaire in the Annex 3 of ACC/1 document. For other updated information on this matter, please to the answers 107 and 108 herein. Any modification to the licensing procedure will be notified frequently to the Working Party.

Question 116.

(Q.161) We would like to know whether there is a target date by which Vietnam will bring its licensing regime into full compliance with the time-limits for processing import licence applications as set out in Article 3.5(f) of the Agreement on Import Licensing Procedures.

Answer:

Details of the plan of action on the licensing will be notified to the Working Party, when available.

(h) Customs valuation

Question 117.

Please provide a comprehensive list of "goods, which are not subject to the States management in respect of customs values and for which contract values cannot be applied, "that the General Department of Customs sets the minimum prices. We note that these goods are not the same goods as listed in question 313 of document WT/ACC/VNM/3.

Answer:

The goods which are subject to management with respect to customs values are listed hereunder 15 groups.

In comparison with the List mentioned in question 313 document WT/ACC/VNM/3, 6 groups of commodities were cut down from this list. The former included 21 groups and the current includes 15 groups. It is new progress in our effort to amend Custom Evaluation system as mentioned in answer 73.

According to Decision QD 68/1999/QDBTC dated 01/7/99 of Ministry of Finance, the following goods categories are under Import Duty Price management:

- Sugar, cake and confectionery;
- Beverages;
- Paints;
- Plastic and plastic products including categories specified in the Pricing list;
- Rubber tyre, inner tube, brassiere;
- Paper, paper cover including categories specified in the Pricing list;
- Hygienic products (washing basket, basin, bath, lavatory, water tap), tile;
- Construction glass;
- Iron, steel and fixative aluminum;
- Gas cooker;
- Motor and engine;
- Electrical appliances including:
electric water bumper, speaker of various types, electric fans, radio, cassette player, CD player, air conditioner, television, refrigerator, cooler bar, video player, amplifier, washing machine, electric hot water boiler, video CD player with accessories, electric rice cooker (the above appliances designed using voltages from 80V)
- Cars and accessory kit;
- Motorcycles and accessory kit;
- Table, chair, bed, wardrobe...

Question 118.

Regarding Question 172. Could Vietnam update on the step taken since the last session of the Working Party to implement the CVA. WE request that Vietnam commit to a clear timetable for the implementation of the CVA. Please report the timetable for the fulfilment of this undertakings to the Working Party.

Answer:

The timetable for the implementation of the GATT Valuation Agreement is divided into the following stages:

- Stage 1: Up to the year 2003

To formulate legislation on to gradually comply with Custom Valuation Agreement.

To implement the Post Clearance Audit

To carry out determination of customs values as per transaction value as well as to shorten gradually the list of items subject to minimum values for customs valuation purpose.

To organize training courses and disseminate information on determination of customs values consistent with the Customs Valuation Agreement.

- Stage 2: From 2004 to 2005

To continue to formulate and improve legal documents providing guideline on implementation of Customs Law (which has been issued by National Assembly) on the determination of customs values and other documents on post clearance audit under the new customs valuation system.

To implement customs valuation methods as provided for in Customs Law.

Therefore, if the above stages are completed smoothly, Vietnam will fully implement the Customs Valuation Agreement by 2005.

Question 119.

Please specify the HS number of the goods submitted to minimum prices. Please specify a clear timetable for the elimination of minimum prices

Answer:

The list of items subject to minimum values for customs valuation purpose, which was regulated on Decision 68/1999/QD/BTC of Ministry of Finance in July 1 1999, consist of 15 following groups

List of commodity group subject to price management for determination of import duties

No	Commodity	HS Number
1	Sugar and confectionery	170100, 170200, 1704, 1806, 1905
2	Beverages	Chapter 22 excl. heading 2209
3	Paints	From heading 3208 to heading 3210
4	Plastic and plastic products: + Plastic plate + Plastic doors and windows + Plastic ceiling coverings + Plastic film for production of packages.	All the commodities in heading 3925 excl. sub-heading 39251000, from heading 3919 to heading 3921, 391800
5	Tyres, inner tubes, ..	4011, 4012, 4013
6	Printing, writing and photocopy papers	4801, 4802, 4810, 4823
7	Sanitary wares (wash-basins, sinks, water closet pans, bidet, tap), bricks	3922, 681599, 690100, 6902, 690400, 690700, 690800, 691000, 691190, 691200, 7324

No	Commodity	HS Number
8	Glass sheet	7003, 7004, 700800, 7009
9	Iron and steel	Chapter 72
10	Gas cookers	732100
11	Electric Equipment: + Pumps + Electric fans + Air conditioning machines + Refrigerators, refrigerating display counters + Washing machines + Storage water heaters + Cooker + Speakers + Radio, cassette, cassette player + CD apparatus/player + VCD apparatus/player + Electric amplifier + Television + Video head	841350, 841360, 841370, 841381 841451, 841459 841510 @On 841590 nhãm 8418 nhãm 8450 851610 85166010 851821, 851822, 851829 8519 8522 8522 851840 852810, 852820 8521
12	Combustion piston engines, electric motors and generators	8407, 8408, 510
13	Automobile and spare parts	870200, 8703, 8704, 870600, 870700, 870900, 8715, 8716
14	Motorcycle and spare parts	8711
15	Furniture	9401, 9403

(j) Pre-Shipment inspection

Question 120.

Re Question 186. We seek the commitment that Vietnam will not apply PSI measures until a WTO consistent legislation is implemented.

Answer:

When the application of PSI measures is necessary, Vietnam will make reference to provisions of related Agreements and reality as a basis to prevent Vietnam's commitments from any possible discrepancy in the context of Vietnam's negotiation for WTO membership.

Vietnam's legislation is being revived and complemented to be adaptive to WTO rules, including eventual legislation on pre-shipment inspection.

(k) Application of internal taxes on imports

Question 121.

Concerning response to question 188, when does Vietnam intend to provide the Working Party with a comprehensive list that clearly shows each item taxed by the VAT on HS basis and the corresponding tax rate?

Answer:

Please refer to answer 71

Question 122.

Concerning response to question 189 (WT/ACC/VNM/6)

Vietnam states that "during the transitional stage, local automobile assemblers and manufactures may be granted preferential reduction or exemption as determined by the Government"

How long does Vietnam anticipate the "transitional stage" will last? Does Vietnam intend to apply exemptions and/or preferential treatment during the duration of the transitional stage?

Answer:

According to regulations in Excise Tax Law and Official Note 168/1999/TT-BTC of Ministry of Finance: car assembling enterprises are entitled to 95 per cent deduction from Excise tax in 5 years from 1/1/1999 to 31/12/2003. In case the producer still suffering from loss, deduction might be applicable but not exceeding in the next 5 years.

Question 123.

Vietnam also states in its new Law on Excise Tax, that it will reduce the rates for several items, such as cigarette, beer, and liquors. Does this mean that rates of the excise tax have been harmonized between cigars/cigarettes produced from domestic inputs and cigars/cigarettes imported or domestically produced from imported tobacco? When does Vietnam anticipate that all items to be covered by the new Law on Excise Tax will be fully harmonized?

Answer:

In the tax reform process at period II, Vietnam always considers national treatment between exported and domestic products. However, appropriate balances in economic and trading policy framework concerning the assurance of overall need to be taken into account. Vietnam is making strong efforts to overcome this problem as soon as possible.

Question 124.

Concerning response to question 194, can Vietnam provide a comprehensive list of all items covered by the new Law on Excise Tax and their corresponding rates and HS codes? How does Vietnam determine which goods are "non-essential" and then their corresponding tax?

Answer:

Please refer to answer 71.

Identification of "non-essential" goods categories are based on similar procedures as of other countries, namely luxurious goods categories that are beyond the needs of basic life or the consumption of such goods might affect community health or social morality... Duty level will be specified based on consumption demand for such goods in relation with residential savings and budget payment.

Question 125.

Concerning response to question 198, Vietnam states that "goods that are subject to excise taxes are not subject to VAT". Does this exemption apply equally to domestically produced and imported goods?

Answer:

Value Added Tax (VAT) of Vietnam specifies goods categories subject to Excise tax which are not targeted by VAT at direct import and export stages. VAT will be applied identically to import and domestic goods.

Question 126.

Concerning response to question 199, Vietnam confirms that domestic and foreign firms are both equally subject to the Natural Resources Tax (modified)

Are there different levels of the tax for foreign firms as opposed to domestic firms? If so, this could possibly violate national treatment principles of the GATT?

Answer:

All individuals, organizations exploiting natural resources within mainland, islands, internal water, privileged economic areas and veranda floor of mainland are subject to Resource tax. This means that the same amount of tax is imposed on any foreign or domestic companies which exploit the same kinds of natural resources.

Question 127.

Concerning response to question 200, it is unclear which specific appendix and/or annex Vietnam is referring to in WT/ACC/VNM/3/Add.1

Please cite a specific appendix and/or annex, or provide a separate list on which beverages are subject to the "special sales tax"

Answer:

Decree 84/1998/ND-CP dated 12/10/1998 specifies details for implementing Excise Tax law, the following beverage products are targeted:

- Alcohol;
- Beer.

Concerning Article 20, please refer to the unofficial translated version of Excise Tax available at the Secretariat.

Question 128.

Guidance by the Vietnamese authorities for foreign companies not to add VAT on the price of goods after introduction of VAT in January was unreasonable bearing in mind that the nature of indirect taxes. Such guidance not to increase the price, even after introduction of a new VAT system, should be abolished.

Answer:

At the very beginning of the implementation of VAT, a number of businesses had taken the opportunity of new tax implementation to raise prices illegally which caused losses to consumers. To avoid a big mess in the market, the Government issued regulations for stabilising prices such as requiring all businesses to declare publicly the selling prices of their goods. Sensible goods categories under governmental management will not experience increase in price including electricity, gas and petroleum, telephone fee ... For other goods categories, the Government encourages businesses to calculate correct price based on supply and demand to protect business's rights and keep the normal flow of goods in the market. Practice has proved that goods prices in market have been accepted by consumers and a lot of businesses have cut down product price due to VAT composition in selling price is lower than before.

Question 129.

Vietnam should explain why the comprehensive list , regarding the classification by HS numbers to show clearly the VAT of all the items is applicable under Article 8 of the Law on VAT, not available at this moment. We strongly request Vietnam to provide such a list to Working Party.

Answer:

Please refer to the answer 71.

(l) Rules of origin

Question 130.

Could Vietnam provide more details on the “plan” for the elaboration of legislation on rules of origin to the Working Party, or any draft legislation when it becomes available. Please provide to the Working Party the timetable that Vietnam envisions for the creation and implementation of such legislation.

Answer:

Vietnam taken part in the establishment of AFTA (Asean Free Trade Agreement) and applying the Preferential Rules of Origin of AFTA. Vietnam will issue legal documents on identification and examination of goods origin. Vietnam will provide the Working Party with the timetable for setting up non-preferential rules of origin as soon as it is available.

(m) Anti-dumping, countervailing duty and safeguard regimes

Question 131.

Re Question 207. Please provide to the Working Party a timetable for the establishment of “legal and institutional framework for the proper enforcement” of anti-dumping and countervailing duty legislation. Please also outline the type of legal and institutional reforms, which Vietnam envisions in order to provide for enforcement during this period.

Answer:

At the moment, Vietnam has not designed a concrete plan to create the regulations on anti-dumping, countervailing duty and safeguard. Vietnam will provide the Working Party with the timetable for formulating and implementing those regulations as soon as it is available.

Question 132.

Concerning response to question 102 and 207, Vietnam states that the 1999 Amendment to the E-I Tariff Law provides that goods may be subject to additional import duties, inter alia, " if the goods imported in Vietnam with lower prices as compared to normal prices as a result of dumping [and] export subsidies which hamper the production of similar goods in Vietnam

What does Vietnam mean by "normal prices" and how are they calculated?

Answer:

A draft under-law regulation is underway for implementation of additional import tariff. It is planned that methods of determining transaction price with reference to the Agreement on Implementation of Article VII of the GATT 1994 will be applied as far as the current management skills of Vietnam allow.

Question 133.

Please confirm, per the response to question 207 that Vietnam does not consider that these provisions constitute sufficient legal provisions for the administration of Antidumping, CVD and safeguard measures in accordance with WTO requirements.

Answer:

These above regulations will be elaborated for implementation purpose. During the construction process of such elaborate documents, Vietnam will take WTO related rules into consideration.

Question 134.

When does Vietnam plan to elaborate these provisions to implement the WTO Agreement on Antidumping, Subsidies and Countervailing Measures and Safeguards?

Answer:

Vietnam will try her best to observe the framework of WTO rules promptly or as soon as possible after the accession.

(p) Other border measures, e.g. any other schemes that have border effects similar to those of the measures listed under (e) above.

Question 135.

Concerning response to question 171, when does Vietnam expect to have a completed set of rules for trade in the Vietnam-Cambodia border areas?

Vietnam states that "for a large amount, trade will have to pay duties". Please clarify who and/or what is meant by "trade"?

Please explain the nature of the duties that will have to be paid?

Answer:

No favourable bordering trade agreement has been signed between Vietnam and Cambodia. However, the following regulations on Vietnam-Cambodia bordering trade exist:

Decision 0724/99/QD/BTM dated 8/6/1999 promulgates Regulations on the establishment of and control on the markets along the border between Vietnam and Cambodia.

Regarding Customs on bordering trade, the above Decision 0724/99/QD/BTM specifies the following:

- Border trade by local residents amounting to 500.000 VND (equivalent to 35 USD)/turn/day are exempted from custom duty. The exceeding value will be subject to normal tariff.
- Cargoes cleared through the custom by businesses are commercial in nature and subject to normal duty.

Therefore export and import duty specified here are basically the same as normal custom duty.

Question 136.

Vietnam states in WT/ACC/VNM/6 that "the measures that are inconsistent with Art III, if any, will be reviewed and phased-out". Can Vietnam provide a specific time-table for review? Is there currently any legislation pending addressing any such inconsistencies? Will all inconsistent measures be phased-out and/or replaced with consistent ones prior to accession?

Answer:

In Vietnam Legal system there still exist a number of points inconsistent with Article III of National Treatment. Vietnam is thoroughly examining the Legal system together with step-by-step adjusting to comply with WTO rules including Article III.

As an outcome of the 3rd session of the Working Party, at the 4th session of the Working Party, Vietnam will provide the legislation program which gave names and estimated issuance dates for new regulations, adjusting and supplementing the current legal system moving toward the compliance with WTO rules.

2. Export Regulation

(c) Quantitative export restrictions

Question 137.

Vietnam currently restricts the maximum cutting volume of wood and maintain the annual cutting allocation in addition to the quantitative restrictions on exports of wood.

The annual maximum cutting volume over the past 5 years, as well as the percentage of the allocation to be applied to exports, should be informed.

Answer:

Report on maximum production of wooden products exploited in the last 5 years and the quota for natural forestry wooden export:

Year	Maximum Production of Wooden Products Exploited	Quota for Natural Wood for Export	
		M ³	Percentage in Exploited Woods
1995	617,000		
1996	590,000	330,000	55
1997	522,000	80,000	15
1998	432,000	100,000	23
1999	300,000	150,000	5

Source: Ministry of Agriculture

- Total amount of exploited wood from planting forests currently is approximately 35,000 m³ per year.
- In addition to exports exploited from domestic natural forests, there are a number of exported wood and wooden products which are originated from imports.

Question 138.

We seek from Vietnam the commitment that, upon accession to the WTO, it will only maintain those export restrictions that are justified under WTO rules. We would also like to note that export quotas are not justified under WTO rules. Could Vietnam provide a clear timetable for the elimination of those measures that are inconsistent with WTO rules?

Answer:

The abolishment of export restrictions on textile and clothing depends on agreements to be concluded between Vietnam and other countries applying quantity import restrictions.

Since rice is vital for Vietnam's socio-economic security, Vietnam does not intend to give up the control over production and importation of this commodity. However, Vietnam will develop a flexible control mechanism.

Question 139.

Please explain how the flexible export restrictions on rice is applied.

Answer:

In order to ensure national food security, Vietnam has been relying on 2 rice export control measures:

- Indicative Export Volume
- Focal-point exporter

Indicative Export Volume: Depending on the forecast of annual consumption demand, storage and production volume of rice, at the beginning of each year, the Government announces planned indicative export volume which will be allocated to enterprises. During that year, the Government may increase or adjust the indicative export volume. The indicative export volumes has been increasing for the last recent years.

Data on Quota and Fulfilled Quantity of Export Rice in Recent Years		
Year	Indicative Export Volume	Actual Export
1997	-	3.5
1998	3.5	3.7
1999	3.9	4.5
2000	4.3	-

Unit: Million tonnes
Source: Ministry of Trade

Focal-point Exporter: In the past, only State-owned enterprises had the right to export rice. Nowadays, economic entities who may become focal-point exporters are no longer limited to state owned enterprises. Since 1998, beside the focal point exporters, other Vietnamese enterprises regardless of their forms of ownership seeking a new market and signing export contracts with favorable terms (it is actually required that the contract providing that rice export performance is subject to the allocation of export quota by the government) are also entitled to export rice.

The number of enterprises exporting rice for the years 1997-1999	
Year	Number of Enterprises
1997	26
1998	36
1999	64

(f) Export financing, subsidy and promotion policies

Question 140.

Concerning response to question 218 and 222, Vietnam acknowledges that it operates agricultural and industrial subsidies, and states that notifications for these measures are being prepared.

We seek circulation of these notifications to the Working Party for review and discussion prior to the conclusion of negotiations.

Answer:

In terms of agricultural subsidies, Vietnam is in process to complete data for the WT/ACC/4 formatted Notification to be submitted to the Working Party in due course.

Question 141.

What does Vietnam intend to do about the industrial export subsidies detailed in the response to question 222 to bring them into line with WTO provisions?

Answer:

Being a developing country with very low income, on the one hand, Vietnam is trying to limit export subsidies. But on the other hand, Vietnam also realizes the need to reserve this right for the purpose of development.

Question 142.

The response to question 226 is inadequate, in that the issue is not whether the firms receiving subsidies are STEs but rather what Vietnam is prepared to do to eliminate the violation of WTO provisions represented by the subsidy. What is Vietnam prepared to do to eliminate the violation to WTO provisions?

Answer:

For years enterprises have no longer been provided with inputs and materials at subsidized prices. Some enterprises regardless of their ownership are allowed to operate and conduct their business activities with privilege. The relevant information are provided in the WTO format notification on Industrial Subsidy attached herewith. The information regarding Vietnam's agricultural domestic supports and export subsidies will be submitted in due course in the format of document WT/ACC/4 of the WTO Secretariat.

Vietnam's policy-adjusting programmes are in progress and will be notified as soon as possible.

(h) Import duty drawback schemes

Question 143.

Please confirm that the amount of duties rebated upon export do not exceed the import duties applied to goods physically incorporated in the export, and do not cover production machinery or other un-incorporated factors of production

Answer:

The tariff duties imposed on imported materials used as inputs to produce or process exports shall be refunded proportionate with their actual incorporation in the exports. The determination of depreciation costs of machinery and equipments and other costs relating to export processing activities which are not covered in the amount of duties rebated upon export will be applied according to the provisions of Law on Corporate Income Tax the same as to other types of production and trading enterprises.

3. Internal policies affecting foreign trade in goods

(a) Industrial policy, including subsidy policies

Question 144.

Besides lower tax rates applied to export-producing enterprises, which other subsidy is granted to companies?

Answer:

Beside preferential taxes given by Decree 51/1999/N§-CP, companies producing export goods are allowed to enjoy privilege from Export Promotion Fund of the Government. In September, 1999, Prime Minister issued Decision 195/1999/Q§-TTg on Establishment, Use and Management of Export Promotion Fund for supporting, encouraging, promoting the exportation of goods, and strengthening the competitiveness of Vietnam exports.

The purposes of the Export Promotion Fund are as follows:

To cover wholly or partially bank interest lending rate to purchase agricultural products for stock when the world market price slumps that causes adverse affects on domestic production. (The stock will be exported under the guidance and management of the government).

To provide occasional support to export promotion efforts of products suffering weak competitiveness or to cover the losses caused by unforeseen risks.

To grant financial rewards for efforts of export market research and expansion, production of goods, new export products, production of high quality exports recognized in writing by International Organizations, high export turnover and effectiveness.

Question 145.

Please specify the conditions for obtaining the import duty exemption for equipment, machinery and specialized means of transport.

Answer:

Foreign invested enterprises, parties to business co-operation contracts are exempted from import duties for:

- Machinery, equipment to set up fixed assets of the companies or the business co-operation contractual projects.
- Specialized means of transport used in technological assembly to set up fixed assets of the companies or business co-operation contractual projects and specialized transport means for workers (vehicle with 24 seats or more , waterway transport means);
- Spare parts, accessories, components, models supplementary to instruments, machinery, specialized means of transport and other means of transport as above mentioned;
- Raw materials, building materials necessary to manufacture instruments, machinery of technological assembly or spare parts, accessories, components instrument which are supplementary to the machinery and equipment.

When a project expands it's operation or invests in technology innovation, the exemption of import duties is also applicable.

(b) Technical specifications and standards

Question 146.

Information in the inquiry point for TBT measures should be provided. Has Vietnam already established an inquiry point as required by the TBT Agreement? If so, this should be informed as soon as possible.

Answer:

Information on the requested enquiry point has been notified in Annex 5 of document WT/ACC/VNM/3/Add.1 on TBT.

So far Vietnam has not yet established such an enquiry point to provide enterprises with necessary information as required by the TBT agreement.

Question 147.

Re Question 228, We are concerned with the statement indicating that some standards are made compulsory as may be decided by the Minister-in-charge in accordance with criteria such as “applying to goods that are significantly important to the economy”! Could Vietnam provide examples?

Answer:

We would like to provide two examples of Mandatory Standards of Vietnam (TCVN) as follows:

- TCVN 1656: 1993 of Steel
- TCVN 2682: 1992 of Portland Cement

Steel and cement which are considered as significantly important to our economy must ensure to meet all the safety requirements

Question 148.

Could Vietnam give more explanations how unnecessary barriers to trade could be removed based on the criterion of “ensuring effective surveillance in parallel with facilitation of production and business activities”?

Answer:

“Ensuring effective surveillance in parallel with facilitation of production and business activities” may be subject to be deliberated in the process of removing business obstacles.

Several measures of control and supervision are necessary but in the process of implementation, they lead to excessive obstacles caused by many factors such as weaknesses in management, professional skills, complicated procedures and incorrect understanding. To overcome those weaknesses, maintaining the necessary measures at a reasonable level, taking into account the actual management capability, may be appropriate methods to reach the target.

However, in many cases, assessment of a measure is unnecessary business obstacle and the possibility of abolishing this obstacle in the reality of Vietnam needs to be considered thoroughly and objectively in order to ensure the abolishment of such measure does not cause disorder to business and production activities and life of people in all classes or adverse impact on trade.

Question 149.

Could Vietnam explain what does “consistency of technical regulations with that of ISO” mean?

Answer:

Eliminating the technical barriers to trade is Vietnam’s crucial viewpoint to accelerate process of integration to the world economy. Depending on our capability, Vietnam strives to align Vietnam Standards/Technical Regulations with those of International Standardization Organisation (ISO) and other international standardizing bodies.

For instance, Vietnam has set up Vietnam Laboratory Accreditation Scheme (VILAS). This scheme is based on ISO/IEC Guides 25 and 58. As ISO/IEC Guide 25 has been replaced by ISO

17.025, so Vietnam will continue to revise the regulations on VILAS in order to make them harmonized with the requirements of those new standard of ISO.

Question 150.

With a view to ensuring transparency Vietnam has applied the establishment of an electronic mail system providing information on technical standards and regulations. Why not on conformity assessment procedures?

Answer:

Concerning the conformity assessment procedure, please access the following addresses:

Stameqinfo@vnn.vn or

<http://home.vnn.vn/tcvn>

Question 151.

Does “compulsory standards related to the safety, hygiene and national security” mean “technical regulations”? Does “mandatory conformity certification” mean “inspection” or/and “registration”?

Answer:

Yes, compulsory standards related to the safety, hygiene, national security mean the technical regulations.

Pursuant to the newly amended Ordinance on Quality, certification of Vietnam’s standards mandatory conformity includes:

- Mandatory conformity certification (third party certification)
- Quality inspection on imports-exports (third party certification)

In addition, the current registration will be replaced by supplier’s declaration in conformity with technical standards/provisions (first party certification).

Question 152.

We commend the steps taken to date in order to enhance the commodity of Vietnam’s policies to the TBTA. Please provide to the Working Party a more detailed timetable on the transition to full conformity to the TBTA as supplied in question 232, and please confirm Vietnam’s intention to accede to the TBTA upon accession.

Answer:

Vietnam will provide the Working Party with TBT action plan when it is available.

Question 153.

Could Vietnam give us some indications on the scope of these bilateral agreements

Answer:

The Agreement includes the following main contents:

- List of products of signatures to the Agreement
- Acceptance of technical standards/provisions of the importing country by the exporting country
- Acceptance of the competence of testing/calibration laboratories
- Recognition of the exporting country's certificates by the importing country.

Question 154.

Please list mandatory standards applied in Vietnam

Answer:

The list of mandatory standards applicable in Vietnam has been already introduced on the homepage: <http://home.vnn.vn/tcvn>

Question 155.

Regarding quality inspection, could Vietnam clarify the statement "It is mainly applicable to products that are imported for the first time and with unknown or contestable origin or to imported goods which are known to have quality-related problems"?

Import quality inspection; the issue indicated to the inspection type Vietnam applied in case the other type of inspection can not be used and the commodity has risk in term of quality as mentioned in the question.

Answer:

At present, Vietnam is applying State quality control system on imports products publicized and updated annually by the Ministry of Science, Technology and Environment. Though, quality control of the List is mandatory, inspecting each and every lot of import and export goods is absolutely impossible and unnecessary. Hence, products which have been given certificate of quality standard conformity; products of legal entities and persons whose quality control system was certified as conformity with Vietnam standards, foreign standards or international standards products originating from a country which concluded an Agreement on Standardized Quality Mutual Recognition with Vietnam Products whose samples have been inspected before being offered for sale products having good and stable quality which have been previously inspected, may be exempted from inspection. However, mandatory inspection does not replace inspection requirements as possibly provided for in the business contracts .

(c) Sanitary and phytosanitary measures, including measures taken with respect to imports

Question 156.

Could Vietnam prepare a comprehensive presentation on the implementation of both the TBT and SPS Agreements, using the WTO Secretariat checklists as a guide?

Answer:

Information on TBT has been provided in Annex 5 of document WT/ACC/VNM/3/Add.1.

Please refer to the Action Plan on SPS Measures which is attached to this document.

Question 157.

Information on the inquiry point for SPS measures should be provided. Has Vietnam already established an inquiry point as required by the SPS Agreement? If so, this should be informed as soon as possible.

Answer:

So far, a single enquiry point to provide information on its SPS measures is not yet established. Vietnam has already promulgated various legal documents including Ordinances and Regulations on sanitary and phytosanitary control, on plant and animal quarantine, on health quarantine and on fisheries inspection to regulate the separate State control assigned to various ministries/agencies over each of the above mentioned domains. Therefore, relevant information on SPS measures will be individually submitted by each of the ministries/agencies above mentioned in accordance to their specifically responsible domains.

The general enquiry point in Vietnam to provide information on sanitary and phytosanitary requirements is the Ministry of Agriculture and Rural Development of Vietnam (MARD).

To establish such an enquiry point as required by the SPS Agreement before its accession to WTO, Vietnam expects to receive technical assistance from WTO's developed Member States.

(d) Trade-related Investment Practices

Question 158.

Regarding Question 95. Can Vietnam provide a time schedule for the liberalization of the registration requirement for the establishment of automobile assembly factories? Please note that the solution currently envisaged (i.e. voluntary registration of the local content) will not solve the problem of the inconsistency of the current regime with the TRIMS Agreement.

Answer:

Vietnam will continue to maintain local content requirement for a certain period to be defined in the accession agreement between Vietnam and WTO. However, in transitional period, Vietnam will gradually shift from the mandatory requirements to economic measures which are mainly aimed at encouraging or granting incentives to foreign invested enterprises to carry out local content program. Particularly, these measures include:

Drawing up of a policy to specially encourage the development of supporting industries which manufacture accessories, spare parts and components to serve local content program;

Review of existing tariff schedule to identify and eliminate the fact that import duties imposed on a certain spare parts and accessories are higher than those on finished products;

Taking into consideration of the possibility of relaxing some obligations or loosening the required schedule of local content program in a certain period for investment projects which are copying with difficulties in implementing the program.

Question 159.

Could Vietnam be more specific about how the foreign exchange situation has to improve until Vietnam will relax the foreign exchange access?

Answer:

Due to the relatively fast increase of exports than imports, Vietnam's supply and demand on foreign currency have been strongly improved. With a flexible interest rates policy and export – incentives granted by the government, the international balance of payment had been improved making the State foreign currency reserves stable and increased. Foreign and domestic investment in exports production projects will be continuously promoted.

Question 160.

Has Vietnam completed the categorization of Trims inconsistent measures?

Answer:

Vietnam is still in the process of clarification of the trade related investment measures. We will notify the outcome to the WTO Secretariat when it is available.

Question 161.

Vietnam indicates that it is considering liberalization of its local content requirements.

We seek a comprehensive presentation from Vietnam prior to the next Working Party on its plans for the removal of required domestic content levels and local content requirements associated with quantitative import restrictions in conformity with Art III and XI of the GATT, the TRIMs Agreement and other WTO provisions prior to accession.

This presentation should include comprehensive listing of all such requirements, with HS number designation on the products affected, and information on the how and when these requirements will be eliminated

Answer:

Implementation of localization scheme (or local content requirement) is an important policy which aims at supporting development of mechanical engineering, electric and electronics industries of all developing countries including Vietnam.

Vietnam's localization scheme is provided as follows:

- Regarding projects of assembling and manufacturing automobiles: Implementing scheme for manufacturing automobiles spare parts and accessories is a condition to obtain investment licence. No later than the 5th year from the year of commencing production, the value of spare parts and accessories manufactured in Vietnam must be accounted for at least 5 per cent of the complete automobile value and must be annually and steadily increased to reach at least 30 per cent of the automobile value at 10th year of production.
- Regarding projects of assembling and manufacturing motorcycles and motorcycles components: The State of Vietnam does not issue licence for investment projects assembling motorcycles in simple CKD form. From the 2nd year of manufacture, the

value of motorcycle components and spare parts manufactured in Vietnam by the licensed project must account for 5-10 per cent of the complete motorcycle value and must be gradually and steadily increased to reach the target of accounting for at least 60 per cent of the complete motorcycle value in the 5th or 6th year of manufacture.

- Regarding projects of assembling and manufacturing mechanical engineering, electric and electronics products: Assembly projects can only be approved in IKD form and are required that the value of components and spare parts manufactured in Vietnam in the first 2 years account for at least 20 per cent of the value of finished products and must be annually and steadily increased in subsequent years.
- Investment projects of manufacturing spare parts for mechanical engineering, electric and electronics industries (except automobiles industry) shall be granted preferential import duty rates contingent upon their localization rates in respect of semi-products, accessories, parts and materials imported for production of those spare parts.

Vietnam shall, with the objective to develop its economy, continue maintaining the above localization scheme for a certain period of time in accordance with the agreement to be reached with WTO members. However, Vietnam is planning to gradually displace such requirements of mandatory nature by mainly taking economic measures, granting special incentives for foreign investment projects implementing localization scheme, particularly as follows:

- Formulating policy to specially encourage the development of supporting industries to manufacture components, accessories and spare parts for localization scheme;
- Applying tax policies to effectively encourage investment projects manufacturing components, accessories and spare parts. At present, Vietnam is reviewing its current import duty tariff so as to remove the imposition of import duty on some components, accessories and spare parts with rates higher than those applied to finished products.
- In respect of investment projects under operation which face with difficulties due to external factors in implementing localization scheme, Vietnam shall consider relaxing localization requirements and/or granting an extension of localization schedule (rescheduling the required localization time frame) for a certain period of time and under specific conditions.

Question 162.

Vietnam's local content requirement is inconsistent with TRIMS Agreement and the action-plan to abolish it should be explained in detail. Moreover, the requirement to maintain equilibrium between imports and exports is also not consistent with the TRIMs Agreement. The current situation to review the import licensing requirements applicable to foreign investors should be informed. The export/import licensing regime in question is, in our view, clearly inconsistent with the TRIMs Agreement and Vietnam's justification should be explained in detail.

Answer:

In respect of the Action Plan to remove local content requirement, please refer to the answer to Question 161.

In respect of the requirement to maintain equilibrium between imports and exports: Vietnam's current regulations on importing and exporting activities of foreign-invested enterprises are not in violation of the TRIMs Agreement; Vietnam presently does not have any requirement on maintaining the balance between exports and imports.

In an effort to streamline administrative procedures for foreign investment, Vietnam has abolished its export licensing regime previously applied to foreign investment projects. According to the current regulations, foreign-invested enterprises are allowed to import equipment, machinery, means of transport, materials to carry out their capital construction and production in compliance with their import and export plans approved by provincial People's Committee or Management Board of Industrial Zone (Ministry of Trade has currently delegated the power of approving the export and import plan submitted by foreign investment projects which are located in the provincial territory or in the industrial zone to the respective provincial People's Committee or Management Board of Industrial Zone).

Question 163.

A foreign investor faces various serious difficulties caused by the complicated and burdensome procedures, including a public tender requirement and a governmental investigation, when constructing a factory. We request Vietnam to consider deregulating the complicated procedures hindering foreign investors to develop their economic activities.

Answer:

The objectives of tender requirements are to ensure fair competition, equality and transparency in the tendering process so as to be able to sort out the proper contractors who can assure the economic effectiveness of the project, this is also a measure applied in many countries; investigation is taken by the State agencies when a factory is built by contractors so as to guarantee the quality of the works in accordance with Vietnam's construction standards.

However, only are joint-venture projects in which Vietnamese sides are State-owned enterprises and their capital contribution accounts for at least 30 per cent are required to tender. The Government of Vietnam has recently issued the Decree No.88/1999/ND-CP dated 1 September 1999 on promulgation of a new regulation on tendering which is more transparent, more specific and simpler.

The above comment will be noted for reference in the process of policy-making of Vietnam.

Question 164.

Personnel and financial decisions in a joint-venture company are legally required to be made unanimously by the board of management, including any Vietnamese members of the board, with regard to Article 14 of the Law on Foreign Investment. Due to the time-consuming process, a deregulation of the unanimous requirements and the enlargement of autonomy in each company should be provided.

Answer:

Unanimity among parties in a joint-venture is one of important factors that lead to success. In fact, however, not all the decisions are required to be made unanimously by the law. The Law on amendment and supplement of articles of the Law on Foreign Investment in Vietnam newly approved by the National Assembly on 16th May 2000 stipulates that a number of exceptionally important cases, when unanimity among all members of the Board of Directors, presenting at the Board meeting, is required, including appointment and dismissal of key positions such as General Director, First Deputy General Director, amendment and supplement of the Articles of corporation. Besides, parties could also specify in the Articles of corporation other cases when unanimity is required. Since such issue could directly affect business activities, a joint-venture cannot be managed effectively and objectively without unanimity. Not only Vietnamese law but also laws of other countries have the same provisions.

Question 165.

Vietnamese laws and regulations encourage the increase in the percentage of Vietnamese participation in a joint-venture company, thereby substantially restricting a foreign investor's participation. Foreign participation in joint-ventures that are already established should also be liberalized, e.g. if Vietnamese participation is not expected, a joint-venture between foreign investment should be permitted.

Answer:

The Law on amendment and supplement of articles of the Law on Foreign Investment in Vietnam newly approved by the National Assembly on 16th May 2000 stipulates that foreign-invested enterprises, parties of a business cooperation contract are allowed to change form of investment, to split, to merge and to acquire an enterprise. The Government stipulates procedures to change form of investment, to split, to merge and to acquire an enterprise. Such provisions and procedures will be elaborated by the Government.

Recently, the Government of Vietnam has considered to allow joint-ventures investing in certain sectors, where Vietnamese party is no longer able to joint business, to be shifted to wholly foreign-owned enterprises. A wholly foreign-owned enterprise can be invested by one foreign investor or a number of foreign investors collectively. We will provide additional information to this question after the Government approves the list of business sectors where Vietnamese party is no longer able to joint business.

Question 166.

Documents necessary for the establishment of foreign capital entities, such as copies of investment licenses, contract sheets and statutes to establish companies, are often transferred outside by the Government. For example, there has been a case where the contract sheet of a certain company was shown by the Government to another company as an example of a business contract.

We are very concerned over by such a situation where important documents, which should be under the control of the competent authorities, can be easily transferred. Such undesirable behaviour could create serious problems such as that distorting the competitive conditions of the companies concerned.

The Government is obliged to keep confidential any information obtained through licensing procedures. We strongly urge Vietnam to take all the necessary measures to solve this problem.

Answer:

The Government of Vietnam assures to respect and protect investors' rights of confidentiality of their business contracts. The phenomenon raised in the question might mainly occur in State agencies at the managerial level. However, the Government will take this problem into serious consideration so as to find out necessary solutions to solve it.

Question 167.

Vietnamese laws and regulations on foreign investment provide a variety of preferential measures, but foreign investment companies are not entitled to receive those treatment automatically. Such companies must apply to the authorities for any preferential treatment and only if the authorities accept, can they enjoy the benefits. Such a requirement tends to cause unhealthy conditions between the competent authorities and private companies, and even

encourages bribery. We request Vietnam to automatically grant preferential benefits to foreign companies without any exceptions.

Answer:

That preferential treatments permissibly enjoyed by an foreign-owned enterprise under the Law on Foreign Investment in Vietnam must be primarily considered for approval by the competent State authorities upon receiving the enterprise's application form is to ensure that the concerning enterprise satisfies all requirements for being granted those preferential treatments. This consideration procedure is also applied to the Vietnamese enterprises. There are 2 different phases of applying for being granted preferential treatments that should be distinguished : 1) enterprise applies for being granted preferential treatment simultaneously with its application for being issued investment licence. In this case, the consideration for granting preferential treatment to the applicant enterprise are executed simultaneously with the evaluation of the investment project and preferential benefits permissibly enjoyed will be stated in the investment licence of the enterprise. 2) enterprise applies for additional preferential treatments when new incentive policies are issued. In fact, most of these cases have been handled promptly and precisely.

In order to simplify investment procedures and facilitate foreign investors, the Government of Vietnam issued the Decree No.10-1998/NC-CP attached by detailed lists describing criteria for being granted preferential treatments which the applicant enterprise must satisfy so as to enable enterprises to predict their eligible preferential benefits and to form a base for competent authority to consider granting preferential treatments to eligible enterprises. However, Vietnam takes this proposal into consideration to continue reviewing and reforming investment procedures in order to make improvements and to avoid bribery and corruption in investment-relating activities.

Question 168.

There are many cases where a Vietnamese party contributes buildings and the right to use land when a joint venture with foreign capital is established. In the case of a joint-venture with a Vietnamese state-owned enterprise, is it correct that such property contributed by the state-owned enterprise remains state-owned, even after the joint venture enterprises is established? In other words, is it the correct understanding that the contributed property is not regarded as assets of the joint venture enterprise and that the joint venture enterprise is limited in its rights of use and for managing such a property?

Answer:

According to the Law on amendment and supplement of articles of the Law on Foreign Investment in Vietnam newly approved by the National Assembly on 16th May 2000, Vietnamese party in a joint-venture is allowed to contribute their part in legal capital by the value of right to use land, pursuant to the regulations on land; and equipment, machinery, plant and other construction facilities.

Assets contributed to a joint venture shall be considered the joint venture's assets and thus, it has the autonomy in conducting businesses in accordance with the investment licence. The joint venture is also allowed to mortgage the right to use land and the real estate associated with the land in order to borrow from banks permitted to operate in Vietnam. In case of an bankrupt enterprise or that to be dissolved ahead of licensed duration, the remaining values of the right to use land contributed is a part of assets for liquidation.

Question 169.

We are interested in the minimum capital contribution requirement prescribed by the Enterprise Law to be implemented from January 2000, which will combine the Company Law and the Law on Private Enterprise

A translation into English of the Enterprise Law should be provided to the WTO Secretariat for consultation.

Answer:

The Law on Enterprises was passed by the National Assembly of Vietnam on 12 June 1999. This Law will supersede the Law on Companies and the Law on Private Enterprise and come into force as from 1 January 2000.

Pursuant to the Law on Enterprises, the minimum legal capital requirement for establishing an enterprise is in principle abolished, with some exceptions of specific cases.

According to the draft Decree providing detailed regulations on the implementation of the Law on Enterprises which is being prepared by the Ministry of Planning and Investment and scheduled to be promulgated by the end of this year, these exceptional cases are planned to include the following business sectors:

- Monetary and credit sector;
- Insurance services;
- Securities brokerage and underwriting.

Details of the minimum legal capital requirement will be expressly stated in specialized legal documents.

Question 170.

Referring to answer 29 of the replies of Vietnam to additional queries, although the laws and regulations on the use of land is gradually being liberalized, conditions for the right to use land remain inconvenient and insufficient for foreign investors with regard to commercial credit, especially in relation to a mortgage on land. Foreign investors should also be legally permitted to take out a mortgage on land if acquiring ownership through a mortgage is one of the major means enabling for foreign investors to raise funds.

Vietnamese individuals and organizations are permitted to take out a mortgage on land with Vietnamese credit organizations. However, the regulations of the national bank currently prohibits branches of foreign banks to provide a loan secured on land property. Branches of foreign banks should also be permitted to provide such a loan as foreign investors face certain difficulties in raising funds in Vietnam.

Answer:

According to the Law on amendment and supplement of articles of the Law on Foreign Investment in Vietnam newly approved by the National Assembly on 16th May 2000, when a Vietnamese party, in a foreign-invested enterprise, contributes capital by the right to use land, the enterprise is allowed to mortgage the right to use land and the real estate associated with the land in order to borrow from banks permitted to operate in Vietnam. The Government shall determine, in detail, conditions and procedures applicable to the mortgage of foreign invested enterprises. Presently, foreign banks are not yet allowed to provide loans mortgaged by land.

Question 171.

Referring to answers 29 and 30 of the replies of Vietnam to additional queries, foreign investment in Vietnam involves a high risk as the right to transfer the use of land is not permitted without approval by the authorities. Minimizing the investment risk would promote foreign investment in Vietnam. The right to use land, including industrial parks, should be permitted for transfer on a voluntary basis without undergoing official control.

Answer:

In Vietnam, land is subject to public ownership and under the administration of the State. So far the State of Vietnam has promulgated a number of regulations to facilitate land users, inclusively foreign investors and enterprises with foreign owned capital doing business in Vietnam, in transferring and mortgaging their land use right. However, like in many other countries, the State of Vietnam exercises its government and management power over the transfer of land use rights as said above, land is a public-owned property.

Question 172.

Referring to answer 29 of the replies of Vietnam to additional queries, the official registration system of land property rights, e.g. the right to use land and a mortgage, should be established as soon as possible in order for the Vietnamese authorities to permit the transfer of the right to use land and a mortgage.

Answer:

Vietnam takes this comment into consideration for reference.

(e) State-trading practices and SOE

Question 173.

Re Question 279. Vietnam stated its intention to progressively commercialize the operation of state trading enterprises. We would welcome more information on how this progressive commercialization will be implemented, on its scope and on the relative timeframe.

When the Vietnamese Anti-Trust Law will be introduced and what will be its major provisions?

Answer:

Please see the document G/STR/N/4 on Vietnam's existing state trading enterprises attached herewith.

At present, Vietnam has begun drafting the Law on Competition. However, there is not a specific timeframe for drafting of and submitting Law on Competition in which monopoly related issues are scheduled to be addressed. Vietnam will notify to the WTO as soon as the concrete information is available.

Question 174.

Concerning response to question 296 on the three kinds of enterprises operating in Vietnam, SOE may be mandated to carry out public interest activities unless provision is made for compensation, the costs associated with such activities would seem to place such enterprises at an economic disadvantage relative to private enterprises.

How are these costs and disadvantages dealt with by the Vietnamese Government?

Answer:

State enterprises in Vietnam are divided into two following categories:

- Business State enterprise is a State enterprise that operates with profits as main objective and orientation;
- Public service State enterprise is a State enterprise that manufactures and provides public services pursuant to State policies, or directly involved in the discharge of defense or security tasks.

However, some business State enterprises can be mandated by the State to carry out public interest activities at certain times.

A public service State enterprise has the right to benefit from the regimes of allowances, price subsidies and other State preferential regimes when the enterprise performs production duties or provides services for defense and security sectors, for control of natural calamities, or provides public services or products or services required by the State's pricing policies, of which it cannot fully cover the production or service costs (Article 8.1.d of the Law on State Enterprises).

Question 175.

Please explain more specifically what is meant by the term "collective enterprises" and indicate the legal status of such an enterprises?

Answer:

Collective enterprise (Cooperative) is an autonomous economic organization jointly established by labourers who have common interest and need and voluntarily unite and contribute capital and labour with view to mobilizing both collective and individual resources so as to carry out more effectively their production, trading and service activities as well as improve their lives, making contribution to Vietnam's socio-economic development.

Cooperatives operate under the Law on Cooperatives and their legitimate interests and rights are protected by the State.

Cooperative is a full legal entity operating in economic sectors and responsible for its commitments.

Question 176.

Are the large national corporations or A-category corporations listed in WT/ACC/VNM/2 the public interest corporations? Or the profit-oriented enterprises?

Answer:

Large National Corporations and A-category Corporations are all profit-oriented enterprises.

Question 177.

Vietnam states that it intends to progressively commercialize the operations of SOEs.

Would Vietnam please elaborate on this point as well as provide time-lines for this liberalization?

Answer:

The answer to Question 279 of document WT/ACC/VNM/5 states that Vietnam intends to progressively commercialize the operation of enterprises enjoying some special rights or privileges, not State-owned enterprises. This liberalization is associated with the gradual removal of special privileges granted to State trading enterprises so as to make them subject to commercial considerations. The schedule of removal will be provided in WTO accession commitments made by Vietnam through negotiations.

Question 178.

Please provide information regarding SOEs that retain "exclusive or special privileges" in the WTO's format of G/STR/N/4

Answer:

Information on State enterprises which retain exclusive or special privileges will be provided in the WTO's format of G/STR/N/4 as requested in due time.

Question 179.

The list in Annex 6 of WT/ACC/VNM/3/Add.1 covers all economic fields where State-trading enterprises are in operation. Does this list include non-state controlled enterprises with designated or exclusive trading rights? If not, please provide a more comprehensive list to include such enterprises.

Answer:

Information as complete as possible on State trading enterprises will be soon provided in the format of WT/STR/N/4 of the WTO Secretariat.

Question 180.

We seek a list of all economic areas where State-trading enterprises are operating, including HS numbers and descriptions of the products traded by each State-trading enterprise.

Answer:

Please refer to the answer to Question 179.

Enterprises listed in Annex 6 of document WT/ACC/VNM/3/Add.1 include State-owned enterprises and some non State-owned enterprises which are also granted special trading privileges. A comprehensive list of Vietnam's State trading enterprises as defined in GATT 1994 is provided in the Notification of State trading enterprises of Vietnam in the format of G/STR/N/4 of WTO attached herewith.

Question 181.

Would Vietnam please elaborate on the defining characteristics of its state trading enterprises, such as "general Corporations" and "Special Corporations" and what makes them different from each other?

Answer:

Information of state trading enterprises provided in the WTO Secretariat's formatted G/STR/N/4 notification attached herewith.

General Corporations have multi-sectoral activities immediately upon their establishment whereas Specialized Corporations initially registered in some specific trading lines and subsequently expand their trading activities onto other lines not prohibited by laws.

Question 182.

According to Annex 6 of WT/ACC/VNM/3/Add.1, focal-point enterprises in Vietnam engage in the import of pharmaceuticals, culture products, and materials used in the production of insecticides and veterinary medicines.

Are these the full range of activities for focal-point enterprises? If not, please provide the Working Party with a comprehensive list of activities in which focal-point enterprises engage

Answer:

In addition to pharmaceuticals, culture products, and materials used in the production of insecticides and veterinary medicines, Vietnam also requires that a certain number of items be imported through focal-point enterprises. A complete list of importing activities in which focal-point enterprises engage is included in the Notification of State Trading Enterprises of Vietnam in the format of G/STR/4 of WTO and will be supplemented if necessary. State trading enterprises conduct their businesses subject to commercial consideration.

Question 183.

Are foreign companies afforded the same rights as 'other national corporations and private companies' to trade in gold, precious metals and stones? If not, please expand on this discriminatory treatment.

Answer:

According to existing regulations, enterprises with foreign owned capital operating in Vietnam are allowed to engage in the business of gold within the scope of producing, processing and creating gold jewelry and fine arts, importing raw gold, exporting their products and selling a certain portion of their products for domestic consumption in Vietnam.

There is no discrimination between enterprises with foreign owned capital and domestic enterprises in the above mentioned business activities of gold.

Question 184.

In response to the question, "what exceptions does Vietnam make for monopolies with regard to the decision to import," Vietnam states that State-trading enterprises must carry out commercial activities including import in conformity with commercial considerations. This response does not adequately address the question. We request Vietnam expand further on the question.

Answer:

State agencies, not enterprises, have the authority to make decisions to import. Monopoly enterprises (if any) are allowed to make decisions on business activities in respect of the concerned imports but not permitted to decide such issues relating to product policy as quantity, time.

Vietnam so far has not yet issued the Law on anti-trust and anti-unfair competition, therefore, it is only possible for us to submit the Notification of State Trading Enterprises which is attached to this document. The Law on anti-trust and anti-unfair competition is scheduled to be enacted in 2003. Vietnam will provide more details on this law after its promulgation.

Question 185.

We await a complete list of fields and products, by HS number, in which the "State has the exclusive right to conduct commercial activities", as provided for in the Commercial Law.

Answer:

At present, Vietnam has not yet issued list of fields and products in which the State has the exclusive right to conduct commercial activities. Annex G/STR/4 will provide information on Vietnam's present State trading enterprises.

Question 186.

When does Vietnam intend to promulgate an anti-trust law?

Answer:

At present, although Vietnam has not yet promulgated any legal document regulating systematically matters relating to anti-trust and anti-unfair competition, relevant specific problems have been provided in existing laws, inclusively the Law on Enterprises, the Commercial Law and other sub-law documents (Ordinance on consumer protection of 1999, Decision on State management of prices of 1992...)

The National Assembly of Vietnam has approved to put the Law on Anti-trust in the 10th National Assembly's Formation Program of law and decree. The Ministry of Trade, that was assigned by the Government as the key responsible body in drafting this law, has started the preparatory works since 1999 to submit the draft law to National Assembly as soon as possible.

Question 187.

We understand that new laws were enacted governing the export and import of precious stones, including gold and silver.

Are these new laws going to affect the trade in gold and other precious metals used for commercial and industrial use (i.e., gold clasps for necklaces)?

Answer:

The coming new laws are expected to regulate the trade in gold used for commercial and industrial purposes with the view to simplifying procedures for gold importing and exporting (particularly raw gold used to produce gold jewelry and fine-arts for re-export).

Question 188.

Do the new laws imply that there will be no State-trading in gold other than that which is allowed by international standards and consistent with the WTO?

Can a foreign enterprise receive an import licence for gold and silver?

Would they apply to State Bank of Vietnam for an import licence for both gold and silver?

Is there a cost associated with the licence?

How long does the licence remain valid?

Are these products listed in Annex 6?

Please elaborate on these procedures and requirements?

Answer:

In respect of gold of international standards:

- Credit institutions and businesses trading in gold of international standards shall have to obtain business licence issued by the State Bank of Vietnam.
- The State Bank of Vietnam considers issuing shipment licenses for imports/exports of gold of international standards to credit institutions and businesses permitted to trade in gold.

Credit institutions and businesses permitted to trade in gold of international standards shall be operated within the scope of activities as follows :

- To buy and sell gold of international standards and to use gold of international standards for conducting other transactions with the State Bank of Vietnam, other credit institutions, businesses permitted to trade in gold of international standards, in accordance with regulations of the State bank of Vietnam, and to use gold of international standard for other purposes upon the permission of the Prime Minister.
- To export/import gold of international standard on the basis of their shipment licenses.

In respect of gold of non-international standards:

- At present, the Government of Vietnam is drafting a Decree regulating business activities relating to gold of non-international standards. This Decree will elaborate procedures in obtaining licence for import of gold issued by the State Bank of Vietnam to foreign invested enterprises permitted to conduct processing and creating activities of gold jewelry and fine arts in Vietnam.
- Currently, Vietnam Gemstones, Gold & Silver Corporation is a State Trading Enterprise conducting exploitation, production and trading activities of gold, silver and gemstones.

A foreign enterprise can apply for an import licence for both gold and silver.

Question 189.

The estimated proportion of agricultural production, which is purchased or sold by Vietnam's state-owned enterprises, covers a major percentage, e.g. 60 per cent of rice exports, 70 per cent of coffee for export, 90 per cent of rubber exports, etc. How do the state-owned enterprises fix the purchase price for export? The purchase and sold regime is supposed to be maintained through the Price Stabilization Fund and some activities through the Fund may be categorized as export subsidies within the meaning of the agreement on Agriculture. Further information on the relation between state-owned enterprises, the fund, its functioning and other activities should be provided.

Answer:

Enterprises, regardless of their ownership forms, are given equal treatment in relation to the Price Stabilization Fund and subject to the same operating mechanism.

Since October 1999, the Price Stabilization Fund has been superseded by the Export Promotion Fund, which is under the management of the Ministry of Finance. However, the Export Promotion Fund has not yet come into operation.

The purchase price for export of agricultural products is determined by enterprises themselves subject to market mechanism (agreement between seller and buyer).

State-owned enterprises do not fix the purchase price for export, but conduct their purchase activities according to market price mechanism like all other business enterprises.

(g) Free economic zones**Question 190.**

The response to question 300 makes it clear that Vietnam's current regime in its export processing zones uses prohibited subsidies as incentives to locate in the zone, in that the benefits are tied to a specific level of exportation from the zone.

Are these all the measures in place in the zones to encourage investment and export? What is Vietnam prepared to do to bring these measures into line with WTO provisions?

How will this be accomplished, and in what timeframe?

Answer:

Complete information on investment encouraging measures in place in export processing zones are provided in the format of WTO Notification on Industrial Subsidies attached herewith. Vietnam will review these measures to bring them into line with WTO provisions in due course if the measures encourage the use of products of domestic origin and cause discrimination against imports.

(h) Trade-related environment policies**Question 191.**

Concerning the response to question 303, Vietnam applies its environmental policies equally to domestically produced and imported automobiles. However, if Vietnam wishes to limit vehicle registrations for environmental/traffic congestion reasons, this need not be accomplished through a quota system on imported vehicle.

We request that Vietnam address how they intend to remove or phasing-out this system and replace it with one that actually addresses environmental concerns.

Answer:

In order to avoid and control increasing environmental pollution, particularly in urban areas, due to waste emitted by various types of vehicles and transport infrastructure of low quality, the Government of Vietnam has been applying a number of measures to limit import of under-50 seat cars, under-5 ton trucks. However, Vietnam imports annually around 11-18,000 automobiles of various types to meet various usage objectives. Meanwhile, domestic automobile manufacturers with limited production capacity can only manufacture and sell about 5,000 units of various types annually, i.e. equivalent to 27-54 per cent of imported automobiles. The limit set on the number of imported automobiles, therefore, is of great importance in order to conserve environment and ensure the suitable usage, taken into account the underdeveloped infrastructure system.

Vietnam takes the above mentioned comment for reference and will continue studying to adopt other measures so as to better satisfy the set target.

(k) Government Procurement

Question 192.

When will the list of the governmental procuring entities be available?

Answer:

The Government of Vietnam promulgated the Decree No.88/1999/NDD-CP dated 01/9/1999 on Tendering Regulations. The Decree regulates uniformly the management on bidding activities, consultants selection; goods procurement; construction, installation; selection of partners to implement the project in full or in part within the territory of S.R.Vietnam. At the moment, the governmental agencies including the Ministry of Investment and Planning in cooperation with Ministry of Finance, Ministry of Trade, Ministry of Construction, the State Bank of Vietnam, and other heads of related ministries/agencies are currently working on guiding documents to implement the Decree.

Question 193.

The reply to question 313 in WT/ACC/VNM/6 outlines the process for publishing tenders for procurement that is open to international bidders. Could Vietnam explain what the rules are for publishing tender and whether tender notices are available to the public, including foreign suppliers (who may have an interest in sub-contracting) when the tender is not open to foreign bidders?

Answer:

Article 13 of the Regulations on Tendering attached to the Decree No.88/CP dated 1/9/1999 of the Government provides that: "The tender opening is made public under the terms of date, time and location stipulated in the caller of tenders. Additionally, at the tender opening, it is required to have the opening tender report including name of the tender package; date, time and location of the tender opening; names and addresses of bidders; bid price; bid bond (warranty) and implementation schedule. Representatives of the party calling for tenders and bidders are required to sign the opening tender report. However, whether the tenders for procurement are open to international bidders or not is not provided in relevant regulations but is pursuant to procurement's purposes. (The WTO Agreement on Government Procurement is just a plurilateral agreement, not a multilateral one).

4. Policies affecting Importation and Exportation of Agricultural products

Question 194.

Further information regarding the domestic sugar production extension program should be provided. Vietnam currently maintains quantitative restrictions on imports of sugar. Moreover, Vietnam levies import custom duties at 35 per cent on sugar in order to protect domestic sugar producers, even though Vietnam is a sugar exporter. Further detailed information on the program is requested.

Answer:

Sugarcanes are mainly grown in the mountainous midland, central coastal regions, highlands and Cuu Long delta area in Vietnam, which are poor and disadvantaged. Before 1995, sugar was mostly produced by household sugar mills, which led to low quality, material waste and environmental pollution. In order to overcome such situation and increase peasants' incomes, since 1995, the Government of Vietnam has allocated part of ADB's loans and China's ODA and domestic credits to build up sugar cane refining plants and stimulated FDI to pour into this sector.

After more than 4 years of implementing sugar-cane program, industrial sugar-cane production capacity can reach 800,000 tonnes per year; 44 sugar plants have been newly built up and expanded. A number of sugarcane growing areas with high quality and productivity have been developed; more jobs have been created, hunger has been gradually eradicated and poverty eliminated step by step in rural regions in Vietnam.

The newly established plants, however, have not been able to reach their expected capacity, resulting in low productivity and high price. This fact requires the Government to protect domestic sugar production so as to ensure reasonable income for farmers growing sugar-cane for a reasonable period.

The existing protection measures applicable to sugar are import licence and import duty levied at 30 per cent and 40 per cent for crude and refined sugar respectively. Presently, sugar is an item included in Vietnam's List of Sensitive Agricultural Products under CEPT/AFTA and will not be subject to tax reduction in the short term.

Question 195.

Vietnam does not seem to restrict the domestic distribution of cigarettes and cigars, even though it currently prohibits the import of cigarettes and cigars from the viewpoint of human health protection. Further information should be provided.

In addition to Vietnam's answer to Question 272 in document WT/ACC/VNM/3, Vietnam reiterates its policy not to lift the import ban. However, Vietnam should secure the same treatment on imported items as on domestically-produced items, even though the policy is aimed at human health protection. Vietnam should ensure its consistency with the WTO Agreements.

Answer:

Vietnam does not intend to develop tobacco industry. However, it is necessary to best utilize the already-established tobacco factories and stabilise tobacco farmers' life.

Question 196.

Vietnam should maintain maximum transparency on tariff-rate quotas. Further information, if any, on differential treatments for state-owned corporations, and the differences of treatment between state-owned corporations and private companies in relation to the allocation of licenses, should be informed.

Answer:

Vietnam will inform of the assignment of some specific tasks to state-owned enterprises immediately as soon as the regulations is publicized providing guidance for the issues in supplement of the Commercial Law. The discriminatory treatment mentioned in the question does not exist in any legal document of Vietnam. In enforcement, Vietnam will regularly review the practice to improve the stability, transparency and non-discrimination of its trading environment.

V. TRADE-RELATED INTELLECTUAL PROPERTY REGIME

2. Substantive standards of protection including procedures for acquisition and maintenance of intellectual property rights

(a) Copyright and related rights

Question 197.

Under the Civil Code, are unregistered works protected?

Answer:

Article 754 of the Civil Code and Article 6 of the Decree No.76/CP provide that: "The copyright over a work shall arise at the moment the work is created and embodied in a certain material form, whether the work has been published or not, registered or not."

Therefore, unregistered works are protected under the civil code.

Question 198.

Are plaintiffs whose works are unregistered required to prove copyright ownership?

Answer:

The plaintiffs who have not registered their works are required to prove ownership of copyright in the works in case of disputes.

Question 199.

Concerning the response to question 351, Please confirm whether producers of phonograms enjoy copyright protection under Vietnam law? Please list the exclusive rights they enjoy?

Answer:

Rights of producers of phonograms are protected pursuant to Article 766, 777 of the Civil Code.

Producers of phonograms have exclusive rights:

- right to permit or to prevent the duplication of the products;
- right to permit or to prevent the distribution of the products;
- right to be entitled to any benefit from the use of the products.

(d) Industrial designs

Question 200.

Please elaborate on the manner in which Art 796 and 804 of the Civil Code and Section 34 Decree 63/CP provide the required rights for designs that are "substantially a copy" of a protected design, as required by Art 26.1 of the TRIPs

Answer:

Article 796 Civil Code provides that the owner of an industrial design has the right to exclusively use the industrial design, to licence other persons to use the industrial design, to request injunction and damage order from the State authority.

According to Article 804 Civil Code "Any person who uses another person's protected object of industrial property during the term of protection without permission shall be considered to infringe the industrial property right". Article 805 Civil Code provides clearly that infringement of industrial designs includes "making products modelled after industrial designs protected in Vietnam; importing, selling, advertising or using of the products modelled after industrial designs protected in Vietnam for commercial purpose".

Section 53(1) Decree 63/CP defines the acts of industrial property infringement as follows:

"A person other than the owner of an industrial property object committing one of the using acts as provided for in Article 805 of the Civil Code and as detailed in Section 34 of this Decree, within the term of protection, and without permission of the owner", "shall be considered as having committed an act of infringement of an industrial property right."

Section 34(2) Decree 63/CP provides in details that the use of industrial design includes the production of, putting into circulation, advertising, offering or storing for sale, importing a product on which a protected industrial design has been applied.

Although the prevailing provisions on the industrial design owner's right mentioned above do not use exactly the same wording of Article 26.1 of the TRIPs Agreement, they are interpreted and practiced in a manner compliant with the requirement that the scope of protection of an industrial design also covers designs that are "substantially a copy" of the protected design. Particularly, the use of designs not substantially different from a protected industrial design is also deemed to be infringement of the right. Such a provision has been introduced to the Decree 12/1999/ND-CP of 6 March 1999 on administrative measures against violations in the fields of industrial property (e.g. Section 9.1(g)), and also to the Draft amendment to the Decree 63/CP which has been submitted to the Government in 1999.

Question 201.

Please explain the manner in which Art 802 of the Civil Code and Section 51 Decree 63/CP accommodate the proviso in Art 26.2 of the TRIPs

Answer:

Under the prevailing laws and regulations of Vietnam, the rights to protected industrial designs are not different from patent rights to inventions. Therefore, restrictive exceptions to industrial design owners' rights are similar to those to patent owners' rights, including non-voluntary licenses provided for in Article 802 Civil Code and Section 51 Decree 63/CP. The provisions on non-voluntary licenses with regard to industrial designs are to be understood as follows:

Upon request of persons having the need of using an industrial design, the competent authority may issue a decision ordering its owner to grant, in return for remuneration, a licence in case the following conditions are met:

1. The owner fails to use the industrial design or his use fails, without justifiable reasons, to satisfy the needs of social-economic development of the country;
2. The person having the need of use has tried to negotiate with the owner but failed to reach an agreement on a contractual licence, even with a reasonable royalty offer;
3. The use of the industrial design is aimed at the satisfaction of the need of national defense, national security, human health and other urgent needs of the society.

Non-voluntary licenses are only granted in accordance with procedures provided in details in Section 51 Decree 63/CP. The Draft amendment to Decree 63/CP which has been submitted to the Government in 1999 proposes that Section 51 is to be amended to comply with the provisions of Art 31 of the TRIPs.

Therefore, non-voluntary licensing of industrial designs is a limited exception, compliant with the provision of Art 26.2 of the TRIPs. Furthermore, the TRIPs does not have such provision prohibiting non-voluntary licensing of industrial designs as that of trademarks (Art 21).

(e) Patents

Question 202.

Please explain how all of the conditions that must be imposed upon the grant of a compulsory licence by virtue of the terms of Art 31 of the TRIPs are accommodated by Art 802 of the Civil Code and Section 51 Decree 63/CP

Answer:

Regarding non-voluntary licenses for inventions, the prevailing laws and regulations of Vietnam are in compliance with the Article 31 of the TRIPs Agreement. In particular, the conditions for granting of a non-voluntary licence provided for in Article 802 of Civil Code are to be understood as follows:

Upon request of persons having the need of using a protected invention, the competent authority may issue a decision ordering its owner to grant, in return for remuneration, a licence in case the following conditions are met:

1. The owner fails to use the invention or his use fails, without justifiable reasons, to satisfy the needs of social-economic development of the country;
2. The person having the need of use has tried to negotiate with the owner but failed to reach an agreement on a contractual licence, even with a reasonable royalty offer;

3. The use of the invention is aimed at the satisfaction of the need of national defense, national security, human health and other urgent needs of the society.

Non-voluntary licenses are only granted in accordance with the procedures provided in details in Section 51 Decree 63/CP. The Draft amendment to Decree 63/CP which has been submitted to the Government in 1999 proposes that Section 51 is to be amended to comply with the provisions of Art 31 of the TRIPs. Particularly, the draft of the Section is as follows:

"Section 51: License upon decision of the competent State authority ("Non-voluntary licence").

A non-voluntary licence refers to a permission compulsorily granted by the owner of an industrial property right, or his or her licensee over the whole invention, utility solution or industrial design, to another natural or legal person or another entity to use such industrial property object upon a decision of the competent State body as provided for in this Section.

The industrial property owner shall be compelled to grant a non-voluntary licence only subject to the conditions provided for in Article 802 of the Civil Code.

The provisions of paragraph 1 of Article 802 of the Civil Code shall not apply before the expiration of a period of the four years from the date of filing the application for a Protection Title or three years from the date of granting the Protection Title.

The industrial property owner who has been compelled to grant a non-voluntary licence is entitled to request that the non-voluntary licence be terminated when the circumstances which led to it cease to exist and are unlikely to recur, provided that such termination does not prejudice the grantee of the non-voluntary licensee.

The Ministry of Science, Technology and Environment is the competent State body having authority to consider requests for a non-voluntary licence, to issue a decision ordering the grant of a non-voluntary licence and decision on suspension of a non-voluntary licence.

Documents of the request for a non-voluntary licence shall comply with requirements for formality and content in accordance with the regulations of the Minister of Science, Technology and Environment.

Within 15 days from the receipt of the documents requesting a non-voluntary licence, the Ministry of Science, Technology and Environment shall notify the owner of an industrial property right, or his or her licensee over the whole invention, utility solution or industrial design, of such request and shall ask for an opinion in writing within 30 days from the date of notice.

If necessary, the Ministry of Science, Technology and Environment shall request the parties involved to re-negotiate in order to overcome disputes and agree on a voluntary contractual licence.

Unless an agreement on a voluntary licence has been reached and provided arguments for objecting to a voluntary licence by the right holder are unreasonable, the Minister of Science, Technology and Environment shall, within 3 months from the date of receipt of the documents of request, issue a decision ordering a non-voluntary licence to be granted. Otherwise, the Minister of Science, Technology and Environment shall issue a notice rejecting the request for a non-voluntary licence.

The Minister of Science, technology and Environment shall, in the decision ordering a non-voluntary licence to be granted, impose licence conditions in compliance with the following provisions:

- A non-voluntary licence shall be non exclusive;
- The scope and duration of a non-voluntary licence shall be limited to the purpose for which it was granted;
- The party to which a non-voluntary licence is granted shall not assign, except with the enterprise which enjoy the non-voluntary licence, or grant sub-licence thereof;
- The party to which a non-voluntary licence is granted shall paid adequate remuneration corresponding to economic value of the use under the non-voluntary likeness or equivalent to a royalty under contractual licence of equivalent scope and time limit.

The decision ordering a non-voluntary licence to be granted shall be published in the Official Gazette of Industrial Property within 1 month from the date of issue.

Within 1 month from the date the Minister of Science, Technology and Environment issues the decision ordering a non-voluntary licence to be granted, the right holder shall comply with such decision on the conditions stipulated therein.

The person who is compelled to grant a non-voluntary licence is entitled to make appeal against the decision ordering the grant thereof before the Minister of Science, Technology and Environment.

The person making request for a non-voluntary licence is entitled to make appeal against the decision refusing the grant thereof before the Minister of Science, Technology and Environment.

The provisions on appeal procedures and settlement of appeals in Section 27 of this Decree shall also apply to the appeal before the Minister of Science, Technology and Environment under this subsection, wherein the Minister of Science, Technology and Environment is the person competent for the first instance.

In case of disagreement with the Science, Technology and Environment Minister's Decision on the appeal, the appellant is entitled to, either appeal further to The Prime Minister pursuant to the Law on appeal, denounce, or initiate a court case in administrative procedures."

Question 203.

Please explain whether importation would satisfy the "use" requirement in Art 802 (1) of the Civil Code

Answer:

According to the definition under Section 34 Decree 63/CP, the use of industrial property subjects includes importation. Therefore, importation does satisfy the "use" requirement in Art 802(1) of the Civil Code.

Question 204.

The list of subject matter "not protected by the State as inventions" in Section 4(4) Decree 63/CP far exceeds that permitted by Art 27.3 of the TRIPs. How does Vietnam reconcile this extended list with the far more limited list of permitted exclusions in the TRIPs

Answer:

The subject matters excluded from patent protection as provided for in Section 4(4) Decree 63/CP includes:

- “- scientific concepts, principles and discoveries;
- methods and systems for economic organization and management;
- methods and systems for education, teaching and training;
- methods for the training of animals;
- systems in regard of linguistics, information, classifications and compiling of documentation;
- designs and planning schemes for construction works, projects for regional development and planning;
- solutions concerning only the shape of articles and being of an aesthetic nature only;
- conventional signs, timetables, rules and regulations and symbols;
- computer software, layout designs of integrated circuits, mathematical models, graphs and the like;
- plant or animal varieties;
- methods for the prevention, diagnosis or treatment of diseases”.

The subject matters excluded from patentability listed above are essentially equivalent to those under the European Patent Convention and patent law of many other countries, and particularly fall under three categories as follows:

- Subject matters that are not technical solutions, i.e. not inventions: discoveries, scientific theories and mathematical methods (scientific concepts, principles and discoveries, mathematical models, graphs and the like);
- aesthetic creations (solutions concerning only the shape of articles and being of an aesthetic nature only);
- schemes, rules and methods for performing mental acts (methods and systems for education, teaching and training); methods for the training of animals; schemes, rules and methods for doing business (methods and systems for economic organization and management); computer software; designs and planning schemes for construction works, projects for regional development and planning;
- presentations of information (systems in regard of linguistics, information, classifications and compiling of documentation, conventional signs, timetables, rules and regulations and symbols);
- Subject matters which are not susceptible of industrial application (methods for the prevention, diagnosis or treatment of human or animal diseases);
- Subject matters which shall be protected in legal systems other than patent (layout designs of integrated circuits, plant or animal varieties).

Therefore, the subject matters under Section 4(4) Decree 63/CP are permitted to be excluded from patentability by Article 27 of the TRIPs, except for the prevention, diagnosis or treatment of diseases of plants. The Draft amendment to Decree 63/CP, which has been submitted to the Government in 1999, proposes that Section 4(4) is to be amended to comply fully with the provisions of Art 27 of the TRIPs.

Question 205.

Please provide the status of Vietnam’s efforts to implement a reversal of the burden of proof in certain circumstances in accordance with Art 34 of the TRIPs

Answer:

Vietnam’s legislation on civil procedures requires the plaintiff’s proof of his accusation, rather the defendant’s proof of alibi.

The Draft Joint Circular of the Supreme People's Court, the Supreme People's Public Prosecutor and the Ministry of Science, Technology and Environment guiding the judgement of cases relating to industrial property rights, which is to be promulgated in 2000, includes provisions on reversal burden of proof imposed on the defendant in certain circumstances as provided for in Art 34 of the TRIPs.

Question 206.

Please provide status information for the implementation of protection for layout designs of integrated circuits, in accordance with Art 35-38 of the TRIPs?

Answer:

Legislation on the protection for layout designs of integrated circuits in accordance with Art 35-38 of the TRIPs are being made in the Draft Governmental Decree on the protection of layout designs of integrated circuits and the Draft Circular of the Science, Technology and Environment Ministry guiding the implementation of the Decree. The Drafts are to be submitted for promulgation in 2000.

Question 207.

Please provide an action plan for the implementation of the Trips Agreement on accession. This plan should detail the areas of inconsistency of the current legislation with WTO rules, the lack of proper legislation as foreseen in the Trips Agreement, the type of measures envisaged to rectify this situation and the time foreseen for its implementation.

Answer:

Vietnam has been carrying out an established action plan for the implementation of the TRIPs Agreement consisting of "a legislation plan", "a laws enforcement plan", which detail the areas of inconsistency of the current legislation of Vietnam with the requirements of the TRIPs Agreement and the scheduled specific measures to rectify the situation, and "a request for technical assistance" in order to ensure that the plans will be completed. The action plan of Vietnam is submitted to the Working Party together with this document.

Question 208.

Draft legislation on subjects pertaining to the field of intellectual property should be submitted to the Working Party when ready for comments.

Answer:

Vietnam would like to express its thanks to the Working Party for their willingness to assist Vietnam in establishing the national legislation . Vietnam would request the Working Party to make comments on drafts on which our internal unanimity is reached. To this end, however, it would take much time because the IPR issues are extremely new and controversial even among policy-makers of Vietnam.

Question 209.

Has the extension of the scope of trademark protection, which was scheduled to be enacted in 1998, now entered into force? Could you provide more details on the protection granted?

Answer:

The intended extension of the scope of trademark protection has been introduced to the draft amendment to the Decree No. 63/CP which has been submitted to the Government in 1999 which is now considered by the Government. According to the draft, the scope of trademark protection is provided for in Section 53.1, as follows:

"Section 53. Infringement of industrial property rights...

Any use of a protected industrial property subject matter by persons other than the industrial property owner shall be considered as an infringement of the industrial property right.

The following acts shall also be considered as an infringement of the industrial property owner's rights:

....

- b) the use of any sign identical with a trademark protected under a Certificate of trademark registration or an international registration for goods or services identical with, or similar or related to those in respect of which the trademark is registered, and/or the use of any sign similar to that trademark for the goods or services identical with, similar or related to those in respect of which the trademark is registered, where such use would result in likelihood of confusion about the source of the goods or services;
- c) the use of any sign identical with, or similar to, an well-known trademark, or the use of that trademark in translation or in transliteration for any goods, services, including goods and services not identical with, similar or related to, goods or services having goodwill under that trademark, where such use would result in likelihood of confusion about the source of goods or false impression on relationship between the person using the sign and the owner of the recognized well-known trademark.

Question 210.

Answer to question 368 is contradictory to question 369 as concerns the right of charitable organizations to apply for trademark registration. Please clarify.

Answer:

Under Section 14.2 Decree 63/CP, only those natural or legal persons who are legally engaged in business activities (production, trade, and services) can apply for trademark registration for their goods or services:

“Article 14: Right to apply for a Protection Title

“2. The right to apply for a Protection Title for a trademark:

- (a) Natural or legal persons or other entities legally engaged in production shall have the right to apply for a Protection Title for a trademark to be used on their products;
- (b) Natural or legal persons or other entities legally engaged in services shall have the right to apply for a Protection Title for a service mark to be used for their services;

- (c) Natural or legal persons or other entities legally engaged in the trade in products manufactured by a third party shall have the right to apply for a Protection Title for a trademark to be used for such products, provided the manufacturer does not use such trademark for the respective products and the manufacturer does not object to such application;

...”

Therefore, a charitable entity can apply for a trademark registration only if it is legally engaged in commercial activities. In other words, those charitable entities that are not legally engaged in commercial activities do not have the right to trademark registrations.

However, charitable entities not being engaged in commercial activities are protected against unauthorized registration as trademarks by other persons of signs and designations identical with, or similar to, their emblems or designations (subsection 2(g) Section 6 Decree 63/CP).

Vietnam sees no contradiction between the two provisions mentioned above.

Question 211.

Death penalty for serious counterfeiting of trademarks cannot be accepted. Vietnam should eliminate it as soon as possible.

Answer:

The Criminal Code 1985 had no special provisions on infringement of trademark rights. It rather had provisions on the crime of production of and trading in counterfeits, which are also applicable to trademark counterfeiting products:

Article 167: Criminal Code 1985:

- “1. Any person involved in the production of, or the trade in, counterfeit goods shall be sentenced to imprisonment of one to seven years.
2. Any person having committed a crime shall be sentenced to imprisonment from five to fifteen years in the following cases:

Counterfeit goods are foodstuffs; medicines, prophylactics, construction materials, fertilizers, pesticides;

The crime has been committed organizationally or professionally;

The crime has been committed by taking advantage of position, power or of the name of State authorities, social organizations;

Counterfeit goods are of great quantity and result in unlawful profits;

The crime is seriously repeated.

3. Commitment of the crime with special seriousness shall be sentenced to imprisonment from 12 to 20 years, life imprisonment or death.”

On the 21st December 1999, the National Assembly of the Socialist Republic of Vietnam adopted the Criminal Code 1999, in which provisions against counterfeit goods above mentioned has been changed in substance.

- The Criminal Code 1999 has been supplemented special provisions on the crime of infringement of industrial property rights in Article 171:

- "1. Any person, for the commercial purposes, misappropriates, uses illegally an invention, utility solution, industrial design, trademark, appellation of origin or other industrial property objects which are being protected in Vietnam where such acts result in serious consequence, or the person has already been imposed administrative sanctions on such act, or has been sentenced on this crime and the sentence has not been eliminated, shall be fined from 20,000,000 VND to 200,000,000 VND or re-educated without imprisonment up to 2 years."
2. Any person having committed such a crime shall be sentenced to imprisonment from six months to three years in the following cases:
 - a) The crime has been committed organizationally;
 - b) The crime has been committed repeatedly;
 - c) The crime results in very serious or especially serious consequence.
3. In addition, the offender may be fined from 10,000,000 VND to 100,000,000 VND, prohibited from bearing the responsibility for certain positions, practising certain professions or doing certain works from one to five years.

The crime of production of, and trade in, counterfeited goods has been divided into three articles, including general provisions on the crime of production of, and trade in, counterfeited goods (Article 156) and specific provisions on the crime of production of, and trade in, counterfeited goods in important fields, namely foodstuffs, medicines, prophylactics (Article 157) and foodstuffs for the animals, fertilizers, veterinary medicines, medicines for protection of plant, plant and animal varieties (Article 158). There are different penalties for each of the three types of crimes mentioned above, among which death penalty is provided for only in case of the crime of production of, and trade in, counterfeited goods of foodstuffs, medicines, prophylactics causing especially serious consequence (Article 157.4).

Thus, according to the newly enacted Criminal Code 1999, death penalty does not apply to crime of trademark infringement, except in case of production of and trade in trademark counterfeited goods in the fields of foodstuffs, medicines, and prophylactics resulting in especially serious consequence.

The new provisions above are necessary to protect public health and nutrition and consistent with the principle provided for in Article 8.1 of the TRIPS Agreement.

V. TRADE IN SERVICES

1. Specific services

(i) Legal Services

Question 212.

The answer to Question 420 of WT/ACC/VNM/7 states that, “previous experience in providing legal consultancy services for five or more years in a foreign law firm as one of the requirements for allowing foreign lawyers to conduct legal consultancy services in Vietnam. Is it correct to understand that foreign lawyers can obtain the required experience in any country?”

Answer:

Pursuant to the Decree No.92/1998/ND-CP dated 10/11/1998 of the Government on legal consultancy of foreign lawyers organizations in Vietnam which has replaced the Decree No.42/CP dated 8/7/1995 of the Government promulgating regulations on legal consultancy practices of foreign law firms in Vietnam, the requirement for 5-year-experience in legal consultancy field only applies to chief lawyers of foreign law firms’ branches in Vietnam who can obtain the required experience in any country. Those who are not chief lawyers of foreign law firms’ branches in Vietnam need only a practising licence issued by a foreign competent authority to be eligible to apply for being allowed to provide legal consultancy services in foreign law firm’s branches in Vietnam.

Question 213.

The answer to Question 420 of WT/ACC/VNM/7 provides that "foreign lawyers in Vietnam are permitted to advise on foreign laws and international laws in the fields of business, investment, and commerce only". What is the reason for limiting the fields to just business, investment and commerce as their scope?

Answer:

Vietnam, at present, does not intend to allow foreign lawyers to advise on Vietnamese and foreign laws in different areas. This provision is consistent with Vietnam’s transition process.

Question 214.

It is stated that foreign law firm may sign a “legal consulting co-operation contract” with a Vietnamese legal service supplier to receive advice on Vietnamese laws. While we note from the answer to Question 420 (WT/ACC/VNM/7) that foreign lawyers are restricted from practising local laws, we would like to know what are the intended scope of services to be covered by “legal consulting co-operation contracts”.

Answer:

Pursuant to the Decree No.92/1998/ND-CP dated 10/11/1998 of the Government on legal consultancy of foreign lawyers organization in Vietnam, foreign lawyers of foreign law firms’ branches in Vietnam are not allowed to advise on Vietnamese laws. However, foreign law firms’ branches in Vietnam may enter into a legal consulting cooperation contracts with a Vietnamese legal services supplier to receive advice on Vietnamese laws and to provide the Vietnamese law firms with advice on foreign and international laws. According to the legal consulting cooperation contract, the foreign law firms’ branches can receive requirements for advice on Vietnamese laws but then have to transfer them to a Vietnamese legal services supplier to handle.

Question 215.

It is noted that the length of per extension period for a foreign law firm is now “not more than 5 years”, instead of 3 years as set out in WT/ACC/VNM/5. Would Vietnam consider revising the document to reflect the change?

Answer:

In answer 422 of document WT/ACC/VNM/6, the extension for a foreign law firm’s branch in Vietnam has been changed from 3 to 5 years.

(ii-iii) Accounting service

Question 216.

The word “previously” seems to suggest that some changes have been made to the licensing requirements since a point of time. We would like to know what are the current position.

Answer:

At the moment, there is no changes in policies on accountancy and auditing firms other than those indicated in document WT/ACC/VNM/5. Please refer to answer 217.

Question 217.

Please provide concrete information about the plan to relax quantitative restrictions on foreign accountancy firms after the year 2000.

Answer:

Beyond 2000, licence for foreign auditing firms will be granted on a case-by-case basis, taking the bilateral agreement into consideration. Foreign auditing firms can only operate in Vietnam in the form of a joint-venture with a Vietnamese auditing firm. In order to be issued licence in Vietnam, foreign auditing firms have to satisfy the requirements provided in the Law on Foreign Investment in Vietnam and other existing regulations on the establishment and operation of independent auditing firms. These firms provide services including auditing, accounting, tax consultancy, financial services. Major clients of these firms are foreign invested enterprises.

(iv-vii) Architectural Services, Engineering Services, Integrated Engineering Services; Urban Planning Services

Question 218.

The answer suggests that the conditions for awarding a project and those for granting a permit to implement the project are the same. But its has no elaboration on whether these two procedures are consequential in practice. Judging from WT/ACC/VNM/5, one of the MA limitations in Mode 3 with respect to Engineering services, Integrated engineering services and Urban planning ,is that a foreign service supplier must first bid for a project. If awarded, he would have to apply for a permit, on a case-by-case basis, in order to implement the project. We wish to have some clarifications from Vietnam on this.

Answer:

After winning the tender, foreign invested enterprises will be considered to be granted a permit to implement the project on a case-by-case basis in accordance with the relevant regulations. Please refer to answer 343 (WT/ACC/VNM/6).

Question 219.

Vietnam does not open its market to foreign advertising companies. Are there any plans to liberalize the market?

Answer:

Any advertisement for foreign goods and services in Vietnam, of which the advertising owners are not Vietnamese legal entities, will be made through an advertisement contract signed with a Vietnamese eligible enterprise which is a legal entity and has registered advertisement service in its business scope (Article 16 of the Decree NO.194/CP dated 31/12/1994 of the Government). In addition, foreign advertising companies are allowed to enter into business cooperative contract with Vietnamese partners with the maximum period of 5 years.

Advertisement in Vietnam is a newly developed sector, therefore, we are planning to gradually liberalize this market.

2. Telecommunications Services

Question 220.

It is mentioned that a master plan for telecommunications sector is being developed. We are interested in getting more information about this plan, e.g., its scope, objectives and timeframe etc.

Answer:

The scope of the Master Plan for the development of telecommunications sector in Vietnam is nationwide. Its timeframe is up to 2010. The Master Plan aims at developing a modern national telecommunications infrastructure. Some specific objectives are: average national telephone density between 10 to 12 subscribers per 100 inhabitants by 2010; telephone services to cover 100 per cent communes by 2005.

7. Banking and Financial Services

Question 221.

Regarding Question 2. Are there any restrictions on foreign ownership in the new Banking and Credit Institution of Law of 12 December 1997? If so, please state these limitations. Does Vietnam commit to submitting to the Working Party, when available, final copies of the Laws on Companies, Private Enterprises and Land?

Answer:

In order to implement the Law on Credit Institutions approved by the Vietnamese National Assembly on 12 December 1997, the Government of Vietnam has issued some legal documents with the following provisions:

1. The proportion of registered capital contribution made by the foreign and the Vietnamese parties in a Joint Venture bank will be subject to their agreement. For a Joint Venture bank which acts as a commercial bank, the contribution made by the foreign party must not exceed 50 per cent of the bank's registered capital.
2. The contribution made by the foreign party in a joint venture non-banking credit institution must account for at least 30 per cent of its registered capital.
3. With respect to the minimum legal capital, the following threshold will be applied:
 - For Joint Venture banks: 10 million USD;
 - For foreign banks' branches: 15 million USD;
 - For joint venture non-banking credit institutions: 5 million USD;
 - For wholly foreign-owned non-banking credit institutions: 5 million USD

The following limitations on foreign ownership in Vietnamese joint-stock commercial banks and joint-stock financial companies will be applied:

A foreign legal entity or foreign individual must not own more than 10 per cent of registered capital of the Vietnamese credit institutions.

Aggregated equity capital proportion owned by foreign shareholders must not exceed 30 per cent of registered capital of the Vietnamese credit institutions.

In June 1999, Vietnam promulgated the Law on Enterprises, which replaced the Law on Companies and the Law on Private Enterprises.

The English versions of Law on Land and law amending, complementing a number of articles of The Land Law and Law on Enterprises are attached herewith

Question 222.

Please provide concrete information about the plan to build two Securities Trading Centers, one in Hanoi and one in Ho Chi Minh city

Answer:

Pursuant to Decision No.127/1998/QD/TTg dated 11/7/1998 by the Prime Minister of the Government on the Establishment of the Securities Trading Centers (STCs) in Hanoi and in Ho Chi Minh City, the State Securities Commission of Vietnam, in collaboration with Ministries and People's Committees of Hanoi and Ho Chi Minh city, has worked out a plan on the establishment of the two Securities Trading Centers as follows:

General principles:

Right at the beginning, the trading systems of both STCs will be automated at small scale and will be gradually expanded and further developed later;

The HCMC STC will be set up and put into operation first, with its headquarter being located at 45-47 Ben Chuong Duong Road-District. The STC in Hanoi will be established later, based on experiences learnt from the operation of the HCMC STC.

Specific activities: In order to put STC into operation, the SSC has been carrying out the following activities:

Formulating legal documents for the operation of the STCs:

The SSC has issued such circulars and regulations as Circular providing guidelines on public securities issuance and establishment of securities firms; regulations on the membership, listing, trading, registration, depository, settlement, public information dissemination, regulations on surveillance and supervision of securities trading on the STCs. The SSC has submitted Decree on Punishment of Administrative Violations in the securities trading and dealing activities to the Government, and has cooperated with the Ministry of Finance to issue the Accounting Regime applicable to the STCs. The SSC is now preparing for the issuance of the Accounting Regime applicable to securities firms by late 1999;

The SSC has further worked in close cooperation with relevant bodies to issue other legal documents such as those on tax incentives for listed companies with a view to encouraging their participation in the STCs;

The SSC has been drafting and issuing documents to provide guidelines on the procedures for application for depository licence and practising licence for individuals operating in this area; on establishment and granting business licence for securities firms as well as practitioners.

Preparing stocks to be traded and related services for the STCs: From now on to the end of 1999, the SSC will have completed the following work:

To select companies issuing qualified securities to be initially listed in the STCs;

To grant business licenses to selective companies;

To select qualified commercial banks to act as the Designated Clearing Bank and Securities Custodian Bank;

To approve selective auditing firms to audit financial statements of issuing organizations.

Training personnel: with the support and assistance provided by some countries and international organizations, the SSC has organized some seminars and workshops on securities for staff of the SSC and concerned ministries/agencies;

In addition, some staff from the SSC and STCs in Hanoi and HCMC have been sent to some foreign stock exchanges as well as institutions operating in the securities sector for study tour.

The Securities Research and Skills Training Center (SRSTC) has organized a number of training courses to grant certificates on securities to staff from banks, corporations and other relevant organizations who want to apply for securities practising licenses. Moreover, the SRSTC has consecutively organized basic-level training courses to publicize knowledge relating to securities to potential investors.

Developing technical and material facilities and purchasing necessary equipment for the STCs:

The SSC is seeking solutions for the set-up of the computer system to facilitate securities trading, depository and settlement activities in the STCs.

Question 223.

Question 439 of document WT/ACC/VNM/5 only touches upon limitations on the scope for business and business form for “foreign insurance enterprises”. Our inquire on details in respect of limitations on the scope of clients and operations remains unanswered.

Answer:

Please refer to answer 126 of document WT/ACC/VNM/3.

Question 224.

There are some discrepancies between the conditions for issuance of licenses for various establishment and operation listed in the answer and those listed in WT/ACC/VNM/5. For example, we note that the requirement of minimum years of operation with sound reputation has not been included in the current answer. On the other hand, the requirement of a foreign credit institution to maintain co-operative relationship with Vietnamese economic organizations has not been mentioned in WT/ACC/VNM/5. Also, we wish to know what “co-operative relationship” in the latter example means.

Answer:

reputation applicable to foreign banks are no longer maintained as conditions for granting licenses. These limitations, therefore, are not indicated in WT/ACC/VNM/6.

It must be noted that “Cooperative relation” means “Credit relation”, i.e. lending and borrowing relation between banks and their clients.

Question 225.

We note that the State Bank of Vietnam is considering the extension of the operation period of joint venture banks from 20 to 30 years. We wish to know when a decision will be made, and whether Working Party members will informed of the decision.

Answer:

Article 12 of Decree No 13/1999/ND-CP dated 17 March, 1999 on organization and operation of foreign credit institutions and Foreign credit Organization's representative offices in Vietnam stipulates that: the duration of joint venture bank in Vietnam shall not exceed 30 years.

Question 226.

We note that Vietnam has provided details on its discriminatory price control. We would like to know if there are other national treatment limitations in forms other than price control.

Answer:

The provisions on National Treatment are concrete and applied to each services sector. Please refer to document WT/ACC/VNM/5, WT/ACC/VNM/5/Add.1, and related questions in document WT/ACC/VNM/3/Add.2 and WT/ACC/VNM/6.

Regarding limitations on NT other than price control, there are still some restrictions applied in specific services sectors as indicated in document WT/ACC/VNM/5.

VI. INSTITUTIONAL BASE FOR TRADE AND ECONOMIC RELATIONS WITH THIRD COUNTRIES

Question 227.

Has a trade agreement between Vietnam and USA being concluded? If so, please describe its content and provide a copy of the agreement to the Working Party.

Answer:

The US - Vietnam Bilateral Trade Agreement has not been signed and are being negotiated in order to solve some existing outstanding.

Question 228.

Difficulties to recognize judicial precedents are arising because no law reports are currently being published, even though publicity of a trial is secured. All judicial precedents should be published.

The official gazette should be published on Internet in order to secure widespread access by the civil society, both in Vietnam and in foreign countries.

Answer:

In Vietnam, the courts' trials at different levels are publicly exercised; the provision of the copies of the court's judgement to people engaged in the law suit as well as others related is also publicized as stipulated by the law.

Vietnamese courts' judgements are independent from the precedent-cases, but dependent on legal regulations. However, the final judgements of the courts are considered as experiences used for the building-up process of Vietnamese legal system.

Presently, official gazette were publicly loaded on the Internet, however, the English version has not been completed.

ANNEX 1

LIST OF IMPORTED ITEMS SUBJECT TO NON-TARIFF BARRIERS IN 1999

HS	Description	STR	Prohibition	QR	Surcharges/ fees	Import licensing	Licensing authority
	Weapon, ammunition, explosives (excluding industrial explosives specifically regulated by the Prime Minister), technical military equipment		X				
	Narcotics		X				
	Toxic chemicals		X				
	Depraved and reactionary cultural products		X				
	Firecracker (excluding fire signal used for maritime safety and other purposes as stipulated by the Prime Minister)		X				
	Children toys having adversely effect in moral education and social security		X				
	Cigarettes (except for certain quantity brought as personal belongings)		X				
	Left hand automobile (including its components and those repaired to right hand ones). Specializing left hand vehicles operating in small area such as cranes, passengers transporting cars in airport, Channel excavators, dustbin lorries, Street Cleaning Lorries, road surfacing machines, Airport passenger transportation car, Fork-lifts at warehouses and ports are allowed to be imported upon requirement		X				
	Second hand spare parts of various kinds of automobile, 2, 3 wheel-motorbikes including second hand motor-attached frames of various kinds of automobiles.		X				
	Amian materials under amphibole group.		X				
	Below 30 CV second hand internal combustion engine .		X				

HS	Description	STR	Prohibition	QR	Surcharges/ fees	Import licensing	Licensing authority
1507-1516	Vegetable oil					X	Ministry of Trade
1701	Raw sugar and beet sugar					X	ditto
2523 1000, 2523 2910	Clinker, black cement	X				X	
2710	Gasoline	X		X	X	X	ditto
2815	NaOH liquid					X	ditto
2204-2208	Spirits	X		X (spirits of over 30o vol)		X	ditto
0906, 1211, 1302, 2936, 2938, 2940, 2941, 2950, 3001, 3003, 3004, 3005, 3006, 3301	Pharmaceutical materials and pharmaceutical products	X					
3102-3105	Fertilizer	X		X	X	X	ditto
3812	DOP				X	X	ditto
3917, 3921	PVC				X		
3923	Plastic packages					X	
4801, 4802, 4804, 4807, 4810, 4820, 4823	Various types of papers					X	ditto
6907, 6908	Ceramic and granite tiles					X	ditto
6910-6913, 7013	Porcelain and glass consumer goods including sanitary ware					X	ditto
7003-7005, 7016	Construction glass	X		X		X	ditto
7212-7216, 7303, 7305, 7306, 7312-7314	Construction steel				X	X	ditto
8414	Electric fans					X	ditto

HS	Description	STR	Prohibition	QR	Surcharges/ fees	Import licensing	Licensing authority
8702	15-20 seat cars					X	ditto
8703	Cars of less than 15 seats					X	ditto
8704 2100, 8704 3100, 8704 9010	Trucks with loading capacity of less than 5 tonnes					X	ditto
8711	2, 3 wheel-motorbikes and components in form of SKD and CKD					X	ditto
8712	Bicycles					X	ditto
8714	Various types of 2, 3 wheel-motorbikes and frames					X	ditto

Acronyms: STR State Trading Enterprises;
 QR Quantitative Restrictions

ANNEX II

List of Export prohibited products, unless indicated in investment licenses of FDI enterprises

<u>List 1</u> Export prohibition	
-	Weapon, ammunition, explosives, technical military equipment
-	Antique
-	Narcotics
-	Toxic chemicals
-	Log, sawn timber, husked wood, fire wood, mining coal from wood or fire wood, other wooden products from group IA and high quality-manufactured pallet from group IIA (refer to the notice), rattan materials
-	Various kinds of wild animal and precious natural animals and plants

<u>List 2</u> Products subject to export quota	
-	Rice
-	Textile and garment exported to EU, Canada, Norway, Turkey markets

<u>List 3</u> Export subject to specific control	
-	Coffee bean
-	Wild animals for export
-	Wild animals for breeding
-	Precious gems, metal and natural pearl
-	Wooden products (except handicraft; those produced from cultivated forest's wood, from imported wood and from artificial pallet implemented under the provision of the Prime Minister in Decision No.136/1998/Q§-TTg ngày 31/7/1998)
-	Minerals

Notice	
Group IA	Group IIA
<p>Calocedrus macrolepis Taxus chinensis Cephalotaxus fortunei Podocarpus neriifolius Pinus kwangtugenis Pinus dalatensis Glyptostrobus pensillis Keteleeria calcarea Amentotaxus argotenia Abies nukiangensis Aquilaria crassana Copressus torulosa Ducampopinus krempfii</p>	<p>Dalbergia oliverrii Gamble Dalbergia bariaensis Dalbergia oliverrii Gamble Dalbergia dongnaiensis Afzelia xylocarpa Sindora cochinchinensis Sindora tonkinensis – A.Chev Pterocarpus pedatus Pierre Pterocarpus cambodianus Pierre Pterocarpus indicus Willd Chukrasia tabularis A.juss Chukrasia sp Chukrasia sp Dalbergia cochinchinensis Pierre Dalbergia annamensis Dalbergia cambodiana Pierre Fokienia hodginsii A.Henry et Thomas Diospyros mun H.lec Diospyros SP Markhamia pierrei Madhuca pasquieri Burretiodendron hsienmu Erythophloeum fordii Padocarpus fleuryi Rauwolfia verticillata Morinda officinalis Lilium brownii Panax vietnammensis Amomum longfiligulare Amomum tsaoko</p>

ANNEX III

List of Narcotics

(Attached to the Decision No. 2033/1999/Q§_BYT dated 09 July 1999 of the Minister of Health)

No	International name	Scientific name
1.	Acetyl dihydrocodein	(5 , 6)- 4,5 - epoxy-3-methoxy-17 methyl-morphinan-6-olacetat
2.	Alfentanil	(N-[1-2(4-ethyl-4,5-dihydro-5-oxo-1 H-tetrazol-1-yl) ethyl]-4-(methoxymethyl)-4-piperidiny]-N-Phenylpropanamide monohydrochloride)
3.	Alphaprodin	(Alpha- 1,3-dimethyl-4-phenyl-4 propionoxypiperidine
4.	Anileridin	(1- para-aminophenethyl-4- phnylpiperidine-4-carboxylic acid ethyl ester)
5.	Bezitramid	(1-(3-cyano- 3,3-diphenylpropyl)- 4 (2- oxo- 3-propoonyl-1- benzimidazoliny)- piperidine)
6.	Butorphanol	(-)-17- (cyclobutylmethyl) morphinan- 3,14 diolhydrogen
7.	Ciramadol	(-)-2-(-Dimethylamino-3-hydroxybenzyl) Cyclohexanol
8.	Cocain	(Methyl ester cña benzoylecgonine)*
9.	Codein	(3- methylmorphine)
10.	Dextromoramid	((+)-4 [2-methyl-4-oxo-3,3-diphnyl-4 (1-pyrrolidiny)- butyl] – morpholine)
11.	Dextropropoxyphen	(-(+)-4-dimethylamino-1,2-diphenyl-2-butanol propionate)
12.	Dezocin	(-)- 13 - Amino- 5,6,7,8,9,10,11 , 12 octahydro- 5-methyl- 5, 11- methanobenzo – cyclodecen-3-ol
13.	Difenoxin	(1- (3 cyano-3,3-Diphenylpropyl)-4- Phenylisonip ecotic acid
14.	Dihydrocodein	7,8- Dihydro-3-O-methylmorphine-hydrogen
15.	Dipipanon	(+)- 4,4- Diphenyl-6-Piperidinoheptan-3.
16.	Drotebanol	(3,4- Dimethoxy- 17 –Methyl morphinan-6, 14 diol)
17.	Ethyl morphin	(3-Ethylmorphine)
18.	Fentanil	(1-Phenethyl-4-N-Propionylanilinopiperidine)
19.	Hydromorphon	(Dihydromorphinone)
20.	Ketobemidon	(4-meta-hydroxyphenyl-1-methyl-4-propionylpiperidine)
21.	Levomethadon	(3-Heptanone, 6- (dimethylamino)-4,4-Diphenyl, (R)
22.	Levorphanol	((-)-3-hydroxy-N-methylmorphinan)
23.	Meptazinol	(3(-3-Ethyl-1- methylperhydroazepin-3-yl) phenol
24.	Methadon	(6- dimethylamino-4,4-diphenyl-3-heptanone)
25.	Morphin	Morphinan-3,6 diol, 7,8-didehydro-4,5-epoxy-17 – methyl – (5, 6)
26.	Myrophin	Myristyl Benzyl morphine
27.	Nalbuphin	17-Cyclobutylmethyl-7,8-dihydro-14-hydroxy-17-normorphine

28.	Nicocodin	Morphinan- 6- ol, 7,8- Dihydro- 4,5-epoxy- 3 methoxy-17- methyl-3-pyridin mecarboxxylate (ester), (5, 6)
29.	Nicodicodin	6- Nicotimylcodein
30.	Nicomorphin	(3,6- Dinicotylmorphine)
31.	Norcodein	N- Dimethylcodein
32.	Opium	Opium
33.	Oxycodon	(14- hydroxydihydrocodeinone)
34.	Oxymorphon	(14- hydroxydihydromorphinone)
35.	Pethidin	(1-methyl-4-phenylpiperodine-4-carboxylic acid ethyl ester)
36.	Phenazocin	(2'- Hydroxy-5,9-Dimethyl-2-Phenethyl-6,7- Benzomorphan)
37.	Pholcodin	(Morpholinylethylmorphine)
38.	Piritramid	(1-(3-cyano-3,3-diphenylpropyl-4-(1-piperidino)- piperidine-4-carboxylic acid amid)
39.	Propiram	(N- (1- Methyl- 2 piperidinoethyl- N- 2- pyridyl Propionamide)
40.	Sufentanil	(N- [4-(methoxymethyl)- 1- [2- (2-thienyl)- ethyl]- 4 – piperidyl]- propionanilide)
41.	Thebacon	(Acetyl dihydro codeinone)
42.	Tonazocin mesylat	(+)-1-[(2 R- 6S –1, 2,3,4,5,6 – hexahydro – 8 – hydroxy- 3,6,11- Trimethyl – 2,6- methano-3- benzazocine-11-yl]
43.	Tramadol	(±)- Trans- 2- Dimethylaminomethyl- 1-(3-methoxyphenyl) cyclohexanol

List of Narcotics in form of Mixture

(Attached to the Decision No. 2033/1999/Q§_BYT dated 09 July 1999 of Minister of Health)

No	Name of the material	Content of base form per single dose product unit (mg)	Concentration of base form per multi dose product unit (mg)
1.	Acetyl dihydrocodein	100	2.5
2.	Cocain		0.1
3.	Codein	100	2.5
4.	Dextropropoxyphen	135	2.5
5.	Difenoxin	No more than 0,5mg Difenoxin and at least 0,025 mg Atropin Sulfat in per dosage unit of product.	
6.	Difenoxylat	No more than 2,5mg Difenoxylat and at least 0,025 mg Atropin Sulfat per dosage unit of product.	
7.	Dihydrocodein	100	2.5
8.	Ethyl morphin	100	2.5
9.	Opium	1 mg Morphin in base form	
10.	Nicocodin	100	2.5
11.	Nicodocodin	100	2.5
12.	Norcodein	100	2.5
13.	Pholcodin	100	2.5
14.	Propiram	100	2.5