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Committee on Regional Trade Agreements

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**FREE TRADE AGREEMENT BETWEEN THE EUROPEAN UNION AND VIET NAM  
(GOODS AND SERVICES)**

QUESTIONS AND REPLIES

*Revision*

The following communication, dated 12 November 2021, is being circulated at the request of the delegations of the European Union and Viet Nam.

**Questions from Canada**

**Characteristic elements of the agreement**

**Background information**

**1.1. Paragraph 2.5 states: "The Parties affirm the importance of cooperation and capacity building for the efficient implementation of the Agreement and commit to deepen cooperation in areas of mutual interest taking into consideration their different levels of development (Article 16.1). Cooperation shall foster inter alia, sustainable growth and the reduction of poverty. Article 16.2 lists areas for cooperation including trade facilitation, trade-related aspects of agriculture, fishery and forestry, environment, labour and small and medium sized enterprises (SMEs)."**

**a. What types of cooperation activities will the EU and Viet Nam undertake as part of the Cooperation and Capacity Building Chapter?**

**Response from the Parties**

The EU is funding a large cooperation programme in Viet Nam, which encompasses many of the cooperation areas covered under Article 16.2.

On trade policy, Viet Nam signed a Financing Agreement to implement the ARISE+ Trade Related Assistance Programme in 2018. The programme will run until the end of 2023 with a total budget of EUR 6.4 million. It includes a large technical assistance facility providing support to the Government of Viet Nam in agriculture-related aspects of trade, the removal of technical barriers to trade and export promotion.

On forestry and trade in timber products, the EU and Viet Nam are working together on the implementation of EU-Viet Nam FLEGT Voluntary Partnership Agreement (VPA). Technical support to the VPA process comes from several sources: (1) Global EU-FAO FLEGT programme, implemented by FAO, provides grant support to government authorities, timber industry associations and non-state actors. The support mostly covers awareness raising capacity building along the negotiation and implementation, including the development of a timber legality assurance system (VNTLAS). (2) FLEGT-Asia regional programme which channels support from the European Forest Institutes (EFI). (3) Direct technical support through service contracts to help both EU and Viet Nam during the VNTLAS development.

Labour aspects of the EU-Viet Nam Free Trade Agreement also receive attention through reinforced cooperation with ILO. A specific Labour-related programme may also be included in the next 2021-2027 cooperation programming cycle between the EU and Viet Nam.

**b. Could the parties please elaborate on which thematic elements will be explored?**

Response from the Parties

The ongoing ARISE+ Programme comprises 4 main components, namely SPS, TBT, Trade Policy supporting EVFTA implementation and Export Promotion.

SPS activities strengthen quality management systems in Viet Nam, in particular the management of pesticide products with a view to comply with Maximum Residue Levels and enter the EU market. They include capacity building for laboratories involved in chemicals testing, the dissemination of good agricultural standards and residue monitoring programmes for products originated from fauna, flora and aquaculture. TBT/Quality Infrastructure activities provide capacity building for conformity assessment bodies towards accreditation and certification in selected export sectors. They foresee the dissemination of information on EU technical regulations and conformity assessment procedures to Vietnamese exporters. Export promotion activities currently focus on the development of a sustainable pepper supply chain – a commodity for which Viet Nam is the main exporter globally. Activities related to Trade Policy and the implementation of the EU-Viet Nam Free Trade Agreement are designed in a flexible manner and are demand driven. They include capacity building to implement regulatory improvements in line with previous legal reviews/recommendations and support for the formation of Domestic Advisory Groups involved in the monitoring of the Trade and Sustainable Development Chapter of the Agreement. On FLEGT, Viet Nam is currently working on the required VNTLAS through new and additional pieces of legislation, capacity building involving all stakeholders. Both sides are analysing the progress, including the identification of inconsistencies still existing between the VPA and Vietnamese law, in order to reach the full deployment of the VPA.

On the labour aspects of Trade and Sustainable Development, the ratification of fundamental ILO Conventions has received attention in the context of the Trade for Decent Work Project, implemented by ILO. Viet Nam ratified Convention 98 (on the right to organise and collective bargaining) in 2019 and Convention 105 (on forced labour) in 2020. The government as an executive branch is studying Convention 87 with a target to submit to the National Assembly for ratifying in 2021. Labour is also central in sector specific cooperation activities, notably in the fishing industry under the regional Ship to Shore Project. Since 2020, Viet Nam has been a beneficiary of this EUR 10 million project, which strengthens the regulatory frameworks related to labour migration and labour standards in the fishing and seafood processing sectors in South East Asia.

**c. Has consideration been given to cooperation activities focused on SMEs owned by under-represented groups such as women?**

Response from the Parties

As the EU-Viet Nam Free Trade Agreement made doing business easier and reduced export-related costs, the SMEs are important beneficiaries of this trade agreement. Provisions to support SMEs are included across the agreement (simplification of procedures, chapter on transparency, regulatory cooperation). SMEs can greatly benefit from removing customs duties, simplified rules, enhanced transparency, making it easier to bid for contracts, elimination of TBTs, strengthening IPR protection, etc.

Viet Nam is currently a beneficiary of the EU-funded Project "Promoting economic empowerment of women at work in Asia" implemented from 2019 to 2022 by UNWOMEN with a total budget of EUR 8 million. The project seeks to improve competitiveness for women-owned SMEs through training courses on soft skills, enhance the role and influence of women-owned businesses and entrepreneurs in policies and dialogue for the advancement of women's economic empowerment in selected countries in Asia.

**Scope and definitions**

**1.2. Paragraph 4.3 states: "Provisions in Section B apply to measures of the Parties affecting establishment in all economic activities except audio-visual services, mining,**

***manufacturing and processing of nuclear materials, production of, or trade in, arms, munitions and war material, national maritime cabotage and domestic and international air transport services and services directly related to the exercise of traffic rights other than aircraft repair and maintenance services during which the aircraft is withdrawn from service, selling and marketing of air transport services, computer reservation system services and ground handling services, and services supplied and activities performed in the exercise of governmental authority (Article 8.3)."***

**Could the Parties confirm whether there are any instances in which, when a Party establishes a fully incorporated commercial presence in the maritime sector of the other Party, it is permitted to engage in domestic marine transport (i.e. marine cabotage)?**

Response from the Parties

National maritime cabotage is excluded from the scope of the EU-Viet Nam Free Trade Agreement. As such establishing a commercial presence in the EU does not entitle an operator of the other Party to engage in this kind of transport in the EU. While some European Member States may allow vessels with non-European flags to perform national maritime cabotage, this is a discretionary decision that is not bound under the Agreement.

**1.3. Article 8.13 of the Agreement provides: "*This Section applies to measures of a Party concerning the entry and temporary stay in its territory of business visitors, intra-corporate-transferees, business sellers, contractual service suppliers and independent professionals.*"**

**The category of business visitors is not defined in the Agreement, while the categories of business visitor for establishment purposes and business sellers are both defined and used throughout the Chapter.**

- a. Is the term "business visitor" used interchangeably with the term "business visitor for establishment purposes" under the Agreement, including, for example, in Article 8.13?**

Response from the Parties

Yes, these terms are used interchangeably. The "business visitors" in the chapeau to article, as well as in the title and the first paragraph of Article 8.14 refer to "business visitors for establishment purposes".

- b. Could the Parties please elaborate on the rationale to include the business seller category? Is there an overlap with activities that could also be covered under the business visitor category and the business seller category?**

Response from the Parties

"Business sellers" are distinct from "business visitors for establishment purposes". "Business visitors for establishment purposes" are linked to a (prospective) investment. "Business sellers" are engaged in selling goods or services. "Business sellers" should be seen as a category similar to the "service sellers" encountered in for example the EU's GATS schedule, but with a broader sectoral scope (selling goods or services, rather than only services).

**Transport services**

**1.4. Paragraph 4.37 states: "The EU takes no commitments for inland waterways transport."**

**Paragraph 4.53 states: "*While Viet Nam has some commitments on internal waterways transport in the GATS, it did not include any under the Agreement.*"**

**Could the Parties elaborate on the rationale for excluding Internal Waterways Transport Services from their respective schedule of commitments for this Agreement, recognizing that this area is listed with partial commitments in the GATS schedule for both the European Union and Viet Nam?**

Response from the Parties

The EU has extremely limited GATS commitments for inland waterway transport. The choice not to take commitments in this Agreement reflects this very limited level of commitment and is in line with the EU's recent treaty practice.

In the EVFTA, Viet Nam made no commitment on inland waterway transport and in GATS, Viet Nam only allows foreign service suppliers through the establishment of joint ventures with Vietnamese partners in which the capital contribution of foreign side not exceeding 49% of total legal capital.

**1.5. Paragraph 4.51 states: "While, under the GATS, mode 1 for maritime transport services is unbound, except for international freight transportation, under the Agreement, Viet Nam maintains no limitations for modes 1 and 2 except for maritime auxiliary services. In mode 3, Viet Nam increased the foreign equity cap from 49% under the GATS to 70% under the Agreement for passengers and freight maritime transportation. Moreover, it made new commitments in maintenance and repair of vessels, maritime agency services and container station and depot services."**

**Is Viet Nam considering extending the increased foreign equity cap for passengers and freight maritime transportation (i.e. from 49% to 70%) to other trading partners with which it has a free trade agreement with Most-Favoured Nation obligations for investment?**

Response from the delegation of Viet Nam

Not yet at the moment.

**Subsidies**

**1.6. Paragraph 4.57 states: "Section B of Chapter 10 applies to specific subsidies to enterprises supplying both goods and services except sectors or sub-sectors which the Parties have not listed in Chapter 8 (Article 10.5). Article 10.7 (transparency) and Article 10.9 (specific subsidies subject to conditions) apply only to the following services sectors: telecommunications, banking, insurance, transport including maritime transport, energy, computer services, architecture and engineering, and construction and environmental services, subject to the reservations provided for in Chapter 8."**

**Could the Parties elaborate on how the reservations provided for in Chapter 8 of the Agreement would be taken into account when implementing the obligations in Article 10.7 (transparency) and Article 10.9 (specific subsidies subject to conditions) for subsidies in the listed services sectors?**

Response from the Parties

Section B of Chapter 10 does not apply to the sectors or sub-sectors not listed in Chapter 8. As a result, the provisions concerning transparency (Article 10.7) and subsidies subject to conditions (Article 10.9) do not apply to subsidies granted to those sectors or sub-sectors. In addition, by virtue of Article 10.5.8, Articles 10.7 and 10.9 only apply to the service sectors listed therein.

**State-owned enterprises and designated monopolies**

**1.7. Paragraph 5.61 states: "The laws and regulations of the Parties governing their systems of state ownership shall not be affected by Chapter 11 which does not prevent the Parties from establishing or maintaining SOEs, granting enterprises special rights or privileges, or designating or maintaining monopolies (Article 11.3)."**

Article 11.3.1 appears to suggest that the domestic laws and regulations governing each Party's systems of state ownership may take precedence over certain provisions of the free trade agreement.

Could the Parties please clarify how they would address a conflict between Article 11.4 (Non-Discrimination and Commercial Considerations) or Article 11.5 (Regulatory Framework) with "the laws and regulations of a Party governing its systems of state ownership"?

Response from the Parties

Article 11.4 (Non-Discrimination and Commercial Considerations) and Article 11.5 (Regulatory Framework) address different issues. In specific, Article 11.4 ensures the commercial activities of entities subject to the Chapter acts in accordance with non-discrimination and commercial consideration disciplines, while Article 11.5 ensure the impartiality of regulatory bodies as well as the enforcement of laws and regulations in a consistent and non-discriminatory manner.

**1.8. Paragraph 5.62 states: "Each Party shall ensure that in their commercial activities SOEs, enterprises granted special rights or privileges, and designated monopolies, in their purchases or sales of goods or services, act in accordance with commercial considerations, except to fulfil their public mandate, and that they do not discriminate [sic] the enterprises of the other Party supplying or purchasing goods or services (Article 11.4)."**

**Enterprises granted special rights or privileges, and designated monopolies, commonly exercise significant market power. In acknowledgement of this, GATT Article XVII applies whenever enterprises granted exclusive or special privileges by a State make purchases or sales involving either imports or exports. Similarly, GATS Article VIII applies whenever a monopoly service is supplied in the relevant market.**

Could the Parties please clarify why Article 11.4.1 only applies to the commercial activities of enterprises granted special rights or privileges, and designated monopolies, thus excluding certain activities that might not qualify as "commercial activities"?

Response from the Parties

The scope of this Chapter, as stipulated in Article 11.2 (Scope of Application) is to provide disciplines to all state-owned enterprises, enterprises granted special rights or privileges, and designated monopolies, engaged in a commercial activity. If an enterprise combines commercial and noncommercial activities, only the commercial activities of that enterprise are covered. Hence, this scope is consistent with the objectives of this Agreement in general and of this Chapter in specific, which is to provide a level playing field for players from both Parties in their competition, as well as to address adverse effects might arise from anti-competitive behaviours.

### **Labour**

**1.9. Paragraph 5.80 states: "The Parties commit to enhance the contribution of trade and investment to the goal of sustainable development in its economic, social and environmental dimensions (Article 13.10). To that end, they encourage greater policy coherence between trade and labour policies, and the development of and participation in voluntary initiatives that contribute to the achievement and maintenance of high levels of labour protection such as fair and ethical trade schemes and agree to, in accordance with their domestic laws and policies, promote corporate social responsibility including education and training activities and technical advice."**

- a. Are there specific activities or areas of focus that the EU and Viet Nam work on as part of their commitment to promote corporate social responsibility under the Trade and Sustainable Development Chapter?

Response from the Parties

The focus areas within corporate social responsibility follows from the Agreement (Art. 13.10(e)) and the referenced international instruments, which are focused on the areas of human and social rights. In support of these commitments, the EU-financed ILO-run project "Trade for Decent Work" (link) includes activities in Viet Nam in support of reinforced implementation of international labour standards, indirectly supporting the effective use of the "ILO Tripartite Declaration of Principles concerning Multinational Enterprises and Social Policy".

**b. Has consideration been given to activities focused on education, training activities or technical advice for SMEs, including those owned by under-represented groups such as women and Indigenous peoples, on corporate social responsibility?**

Response from the Parties

In the context of the implementation of the EU-Viet Nam Free Trade Agreement, dedicated attention is devoted to SMEs, including those led by women. An upcoming new supportive tool is under preparation, which will provide free of charge online guidance for all types of SMEs. The consideration to specific actions on CSR will be given in the course of the implementation of the Trade and Sustainable Development chapter of the Agreement.

Questions from China

**1.10. The EU and Viet Nam have established an annual ministerial trade committee mechanism to monitor and evaluate the implementation of the Agreement. It is reported that the first ministerial meeting was held in July 2021. How do the parties evaluate the effect of the EVFTA since its entry into force? Which sector has recorded rapid growth?**

Response from the Parties

The first EU-Viet Nam Trade Committee was held on 19 July 2021.

The Parties evaluate the state of implementation of the Agreement by having regular contacts, in addition to holding the specialized Committees established under the EU-Viet Nam FTA.

In accordance to the Agreement, the Parties have to exchange annual import statistics for the previous year.

Since the entry into force of the agreement, the Parties have recorded a general increasing trend in trade exchanges.

**1.11. Could Viet Nam introduce the differences of the liberalization level between the EVFTA and other FTAs signed by Viet Nam, such as CPTPP?**

Response from Viet Nam

The EVFTA and CPTPP are Viet Nam's first two new generation FTAs which basically have high standards with wide range of sectors and in-depth commitments. However, for each trading partner, Viet Nam has its own obligations and preferential treatments based on variety of factors.

**1.12. It is understood that the EU-Viet Nam Investment Protection Agreement and EVFTA are negotiated and signed at the same time, and both Agreements have investment-related contents.**

**Could the Parties introduce how EVFTA interacts or coordinates with EVIPA with respect to investment-related contents?**

Response from the Parties

Both agreements have been negotiated together as a package on investment and trade. They are complementary and inter-linked. The FTA includes ambitious market access and liberalisation

commitments on FDI. The investment protection agreement will protect the assets of EU investors in Viet Nam and Vietnamese investors in the EU. Together these agreements create an investment friendly environment between the EU and Viet Nam that would be conducive to further growth.

### **Rules of origin**

**1.13. Regarding Rules of Origin, paragraph 3.26 of the Report introduces that specific materials originating in an ASEAN country which is applying a preferential agreement with the EU, shall be considered as originating in Viet Nam under certain circumstances.**

**What is the basis and consideration for the Parties to establish this specific rule?**

#### Response from the Parties

The provision aims at supporting the economic integration in the ASEAN region. This provision is limited to materials listed in Annex III. As stipulated in Article 3, paragraph 3 of the EU-Viet Nam FTA, the applicable rules of origin for such materials shall be determined in the framework of the FTA of that ASEAN country with the EU.

### **Questions from Japan**

#### **Provisions on trade in goods**

#### **Rules of origin**

**1.14. Paragraph 3.26 of the report describes "Fabrics originating in the Republic of Korea shall also be considered as originating in Viet Nam when further processed or incorporated into one of the products listed in Annex V obtained in Viet Nam, provided that they have undergone working or processing in Viet Nam which goes beyond the operations referred to in Article 6."**

**Are there any specific arrangements for administrative cooperation among EU, Viet Nam and Korea in order to carry out subsequent verification of the origin of "Fabrics originating in the Republic of Korea which is considered as originating in Viet Nam" referred to in Paragraph 3.26?**

#### Response from the Parties

Indeed, the necessary arrangements for administrative cooperation, including verification, have been in place since 23 December 2020 (the Exchange of Notes between the Government of the Socialist Republic of Viet Nam and the Government of the Republic of Korea to Implement the Provisions relating to Cumulation of Origin under the Free Trade Agreement between the Socialist Republic of Viet Nam and the European Union).

**Regarding Paragraph 3.28, the Paragraph 1 of the Article 30 of PROTOCOL 1 in the Agreement stipulates that "*Subsequent verifications of proofs of origin shall be carried out at random or whenever the competent authorities of importing Party have reasonable doubts.*" It gives rise to questions whether the competent authorities of the importing Party select the verification target by random sampling simply or using random sampling after selecting based on some standard of screening.**

**a. It would be greatly appreciated if you could explain the details including whether the competent authorities use some standards for screening or not.**

#### Response from the Parties

In the case of the EU, the controls on the grounds of reasonable doubts are based on risk analysis. The relevant legal provision for selecting transactions to be verified is Article 36 of the Implementing Act of the Union Customs Code, Regulation (EU) 2015/2447.

In the case of Viet Nam, Circular No. 39/2018/TT-BCT dated 30 October 2018 about Prescribing inspection and verification of origin of exported goods. Decree No. 31/2018/ND-CP dated 08 March 2018 on guidelines for the law on foreign trade management in term of origin of goods.

**b. Furthermore, what kind of the standard do the importing Parties set specifically in order to decide if there are reasonable doubts?**

Response from the Parties

The risks analysis criteria are determined independently by each Parties. For the EU, the information is shared between all EU Member States and is obviously not public.

**1.15. Regarding Paragraph 3.28, the Article 33 of PROTOCOL 1 in the Agreement stipulates that "*Each Party shall maintain, in accordance with its law, the confidentiality of information and data collected in the process of verification*".**

**It would be greatly appreciated if Parties could explain details on the laws and regulations that Parties comply with as mentioned in the Agreement.**

Response from the Parties

In the case of the EU, the relevant regulation is the General Data Protection Regulation (GDPR) Regulation 2016/679.

In the case of Viet Nam, Decree No. 31/2018/ND-CP dated 08 March 2018 on guidelines for the law on foreign trade management in term of origin of goods.

**Questions from Kazakhstan**

**Regulatory provisions on trade in goods**

**Safeguard mechanisms**

**Global safeguards**

**1.16. Paragraph 3.50 notes that Article 3.7 of the Agreement contains provisions on transparency issues. Would you please explain how the mechanism for ensuring transparency in the application of safeguard mechanism will be implemented?**

Response from the Parties

In order to ensure transparency, Article 3.6.1 of the EU-Viet Nam Agreement affirms the Parties' rights and obligations of the Safeguards Agreement, including the provisions on transparency. The additional provisions specified in Article 3.7.1 of the Agreement, establish that a Party initiating a global safeguard investigation or intending to impose global safeguard measures shall immediately provide *ad hoc* written notification to Parties having a substantial interest that request such notification. This notification shall include all pertinent information leading to the initiation of an investigation and the proposal to impose measures, including the provisional findings where relevant.

**Sector-specific provisions on trade in goods**

**Pharmaceuticals**

**1.17. In accordance with Article 2.15 of the Agreement, Viet Nam has undertaken to adopt appropriate legal documents allowing foreign pharmaceutical companies to establish enterprises foreign-invested enterprises for the purposes of importing pharmaceuticals that have obtained marketing authorization from Viet Nam's competent authorities.**

**a. Please explain why this commitment was made only in relation to Viet Nam?**

Response from the Parties

This is the result of negotiations between the two sides based on mutual interests and balance of considered factors.

- b. Do the EU countries have similar norms in the current legislation that allow Vietnamese pharmaceutical companies to create enterprises with foreign investment to import their pharmaceutical products on the territory of the EU countries?**

Response from the Parties

There are no specific EU norms aimed at impeding such possibility.

**Liberalization commitments****European Union****Sector specific commitments**

**1.18. Despite the fact that within the framework of the GATS, the EU has made commitments for inland waterways transport, and Viet Nam – for audiovisual services, these sectors are excluded from the Agreement.**

**Please explain why these service sectors are not covered by the Agreement?**

Response from the Parties

The EU has extremely limited GATS commitments for inland waterway transport. The choice not to take commitments in this Agreement reflects this very limited level of commitment and is in line with the EU's recent treaty practice.

The scope of the Chapter 8 and the Agreement in general reflects balanced outcome of negotiations in which interests of both sides are ensured. Furthermore, WTO members still benefit from Viet Nam's specific commitments under GATS.

**1.19. In connection with the UK's withdrawal from the EU, how will this Agreement apply to the UK?**

Response from the European Union

Since the UK withdrawal from the EU, the EU-Viet Nam Agreements binds Viet Nam and the 27 EU Member States.

**Questions from the Philippines****Characteristic elements of the agreement**

**1.20. Paragraph 2.5: The Parties affirm the importance of cooperation and capacity building for the efficient implementation of the Agreement and commit to deepen cooperation in areas of mutual interest taking into consideration their different levels of development (Article 16.1). Cooperation shall foster *inter alia*, sustainable growth and the reduction of poverty. Article 16.2 lists areas for cooperation including trade facilitation, trade-related aspects of agriculture, fishery and forestry, environment, labour and small and medium sized enterprises (SMEs).**

**How did the EU and Viet Nam take into consideration their different levels of development in negotiating the concessions agreed upon and the nature and/or extent of cooperation in mutual areas of interest? Which areas of cooperation identified in the FTA have been prioritized since entry into force, and will most likely be prioritized going forward, especially in view of the COVID-19 pandemic?**

Response from the Parties

The different levels of developments are systematically taken into account when deepening co-operation in areas mutual interest. Activities related to Trade Policy and the implementation of the EU-Viet Nam Free Trade Agreement are designed in a flexible manner and are demand driven.

Cooperation encompasses many of the cooperation areas covered under Article 16.2 of the Agreement.

On trade policy, programmes include a large technical assistance facility providing support to the Government of Viet Nam in agriculture related aspects of trade, the removal of technical barriers to trade and export promotion.

On forestry and trade in timber products, the EU and Viet Nam are working together in the implementation of EU-Viet Nam FLEGT Voluntary Partnership Agreement (VPA).

Labour aspects of the EU-Viet Nam Free Trade Agreement also receive attention through reinforced cooperation with ILO.

**Provisions on trade in goods****Liberalization schedule****European Union**

**1.21. Paragraph 3.15: Table 3.1 shows the tariff and trade elimination commitments by the EU under the Agreement. In 2020, 2,522 lines were duty free on an MFN basis, representing 26.6% of the EU's total tariff, and corresponding to 65% of its imports from Viet Nam during 2017-2019. Moreover, the EU grants preferential duty free access to imports from Viet Nam on 2,890 additional lines (30.5% of the tariff) under its generalized system of preferences (GSP) programme. Following the entry into force of the Agreement, an additional 2,551 lines (26.9% of the tariff) became duty-free for imports from Viet Nam. By 2023, 598 additional lines will be liberalized bringing the total percentage of duty-free tariff lines to 90.3% corresponding to more than 89% of imports from Viet Nam in 2017-2019. Finally, 816 tariff lines (10.7% of imports) will become duty free by 2027 while 106 lines will remain subject to TRQs or the specific duty resulting from the entry price system at the end of implementation.**

**How was the transition from having Viet Nam as a beneficiary of EU GSP to Viet Nam as an FTA partner? What adjustments were made in terms of market access? Further, in the one (1) year since the entry into force of the FTA, how did Viet Nam's exportation to EU improve *vis-à-vis* exportation under the EU GSP?**

Response from Viet Nam

In the first 2 years since the entry into force, Viet Nam's exports to the EU are allowed to choose one of two preferential tariff rates from GSP or from EVFTA. The respective rules of origin are applied.

In the next 5 years, Viet Nam's exports to the EU are still allowed to choose one of the two preferential tariff rates. However, regardless of which mechanism is applied, Vietnamese exports must meet the rules of origin under the EVFTA Agreement.

Since the entry into force of EVFTA (1st August 2020) to 31 July 2021, the number of C/O EUR.1 issued by Viet Nam has increased to 210.759 C/Os, equal to 7,8 billion USD goods exported to the EU.

**Rules of origin**

**1.22. Paragraph 3.26: Article 3 provides for cumulation of origin. Products shall be considered as originating in a Party if they are obtained there by incorporating materials originating in the other Party provided that they have undergone working or processing**

in the exporting Party which goes beyond the operations referred to in Article 6. Moreover, materials listed in Annex III originating in an ASEAN country which is applying a preferential agreement with the EU, shall be considered as originating in Viet Nam provided that they are further processed or incorporated into one of the products listed in Annex IV. As of the date of this factual presentation, no ASEAN country is benefiting from such treatment. Fabrics originating in the Republic of Korea shall also be considered as originating in Viet Nam when further processed or incorporated into one of the products listed in Annex V obtained in Viet Nam, provided that they have undergone working or processing in Viet Nam which goes beyond the operations referred to in Article 6. At the request of a Party, the Committee on Customs may decide that the cumulation for fabrics can be extended to a third party with which the EU and Viet Nam have a regional trade agreement.

- a. How do both parties intend to benefit from such extended cumulation treatment? Noting that no ASEAN country is benefitting from the same, are there any products specifically targeted in the provision of this arrangement in the FTA?**

Response from the Parties

The possibility foreseen under Article 3.12 of the EU-Viet Nam FTA targets fabrics in general, when further incorporated into products listed in Annex V.

- b. Are there any third parties that signified their interest in submitting a cumulation request? What are the Committee's conditions to favorably consider a cumulation request? What factors will an interested party has to consider for the Parties to approve a cumulation request?**

Response from the Parties

Not at the date of drafting the reply.

- c. How long does it take for the Committee on Customs to review the cumulation request?**

Response from the Parties

The Committee on Customs can review a potential request in a reasonable time, depending on the domestic procedures of the EU and Viet Nam. Without a request at hand it is difficult to estimate the length of such a procedure.

**Sanitary and phytosanitary measures**

**1.23. Paragraph 3.36: Import requirements and procedures are set out in Article 6.6. Each Party shall adopt only measures that are scientifically justified, consistent with the risk involved and that represent the least restrictive measures available and result in minimum impediment to trade. The importing Party shall ensure that its import requirements and procedures are applied in a proportional and non-discriminatory manner and it shall ensure full transparency of its import requirements and procedures. The import procedures shall aim at minimising negative trade effects and expedite the clearance process while complying with the importing Party's requirements and procedures. The exporting Party shall ensure compliance with the import requirements of the importing Party. Each Party shall establish and update lists of regulated pests, using scientific terminology, and make such lists available to the other Party. Phytosanitary import requirements shall be restricted to measures ensuring the respect for the appropriate level of protection of the importing Party and limited to the regulated pests of concern to the importing Party. A Party has the right to carry out import checks based on the SPS risk associated with such imports and it shall make available the information about the frequency of such import checks. Finally, any fees imposed for the procedures for imported products shall be equitable in relation to any fees charged for like domestic products and shall not be higher than the actual cost of the service.**

**What is the frequency of the updating of said lists and rationale thereof?**

Response from the Parties

The EU normally updates the list of regulated plants and commodities around every two years, by amending Regulation 2019/2072. The list is part of an EU Regulation, which means that it is always publicly available in its consolidated versions.

The rationale behind the update of the list is the assessment of new scientific evidence during working groups between the Commission and Member States, which is subsequently endorsed so called Plants, Animals, Food and Feed committees with the agreement on the legislative changes.

**Bilateral safeguards**

**1.24. Paragraph 3.55: Bilateral safeguards cannot be applied for a period longer than two years, extendable by up to two years, if the competent authorities of the importing Party determine that the measure continues to be necessary.**

**What parameters can be considered in the determination of the extension of bilateral safeguards, and can a party apply for the extension of safeguard measure more than once within the transition period which is 10 years from the entry into force of the Agreement?**

Response from the Parties

In order to extend a bilateral safeguard measure, the authorities of the importing party need to determine that the measure continues to be necessary to prevent or remedy serious injury and to facilitate adjustment and also that there is evidence that the industry is adjusting. The parameters that need to be considered in the determination of the extension of a bilateral safeguard measure, according to Article 3.11.6 (b) of the EU-Viet Nam FTA, are the conditions specified in Article 3.11 of the EU-Viet Nam FTA, which include Article 3 and subparagraph 2(c) and 2(a) of Article 4 of the WTO Safeguards Agreement. The investigating authority shall also demonstrate the existence of a causal link between increased imports and serious injury or threat thereof and take into consideration the existence of any factor other than increased imports which may also cause injury at the same time. Bilateral safeguard measures can be extended more than once as long as the total period of application does not exceed four years (Article 3.11.6(b) of the EU-Viet Nam FTA).

**Paragraph 3.56: In critical circumstances where delay would cause damage that would be difficult to repair, a Party may apply a bilateral safeguard measure on a provisional basis pursuant to a preliminary determination that there is evidence that imports have increased as the result of the reduction or elimination of a customs duty under the Agreement, and that such imports cause serious injury, or the threat thereof, to the domestic industry. The duration of any provisional measure shall not exceed 200 days (Article 3.12).**

**Kindly explain the critical circumstances that would lead to the imposition of provisional safeguard measure and what would be the consequence/s if, after the expiration of 200 days of imposition of provisional safeguard, a decision to impose a definitive safeguard measure has not yet been reached?**

Response from the Parties

The critical circumstances where delay would cause damage that would be difficult to repair have to be assessed on a case-by-case basis by the investigating authority. This assessment has to focus on the existence of damage that would be difficult to repair which is caused by the increased imports as result of the trade liberalization agreed in the FTA.

After the expiration of the 200 days of application, provisional measures should lapse. Definitive measures can only be imposed once the investigating authority has finalized an investigation complying with all the requirements specified in Articles 3.10 and 3.11 of the EU-Viet Nam FTA.

**Provisions on trade in services****National treatment and MFN**

**1.25. Paragraph 4.12: An MFN provision for investment is included in Article 8.6 such that a Party shall accord to investors of the other Party and to their enterprises, as regards their operation in its territory, treatment no less favourable than the treatment it accords, in like situations, to investors of a third country and their enterprises with some exclusions related to bilateral, regional or multilateral agreements. MFN treatment does not apply to communication services except postal and telecommunication services, recreational, cultural and sporting services, fishery and aquaculture, forestry and hunting and mining, including oil and gas.**

**Are the excluded agreements specifically identified in the EU-VN FTA? Does it include both existing and future agreements?**

Response from the Parties

The excluded agreements are not specifically listed. The only clarification refers to the ASEAN economic community which will qualify as regional agreement (see footnote 17 of Article 8.6 MFN). The MFN treatment does not include any treatment granted pursuant to any bilateral, regional or multilateral agreement that entered into force before the date of entry into force of this Agreement.

**Financial services**

**1.26. Paragraph 4.33: Building upon its GATS commitments, the coverage and depth of the EU's commitments under the Agreement is enlarged while certain limitations remain. In addition to the specific reservations of individual EU Member States, the EU as a whole reserves the right to adopt or maintain any measure requiring a financial institution, other than a branch, when establishing in a EU Member State, to adopt a specific legal form, on a non-discriminatory basis. Moreover, the EU Council directive 85/611 of 20 December 1985, on the coordination of laws, regulations and administrative provisions relating to undertakings for collective investment in transferable securities, is applicable.**

**In relation to Table 4.1:**

Sectors / Sub-sectors	GATS	FTA				
		Compared to GATS	Trade in services		Investment	
			Sector coverage	Commitments <sup>a</sup>	Sector coverage	Commitments <sup>a</sup>
<b>7. Financial services</b>						
A. All insurance and insurance-related services	Partial	Improved	Partial	Partial	Partial	Partial
B. Banking and other financial services	Partial	Improved	Partial	Partial	Partial	Partial

**Based on the table, EU's commitments for banking and other financial services were improved compared to GATS. What are these improvements (as the narrative in Paragraph 4.33 described only the restrictions maintained by EU)?**

Response from the European Union

The EU's commitments in (financial) services could improve over time as for example the EU Member States remove national limitations or conditions due to legislative changes or due to obsolete provisions, such as references to national currencies which have been replaced by the Euro. The latter references can still be found in the EU's GATS schedule.

**General provisions of the agreement****Environment**

**1.27. Paragraph 5.72: Article 13.16 excludes trade and environment issues from the application of the Agreement's dispute settlement mechanism, and it provides for**

**Government consultations as a way to deal with matters arising under Chapter 13. Article 13.17 regulates the establishment of a panel of experts for any matter that has not been satisfactorily addressed via Government consultations.**

### **Labour**

**1.28. Paragraph 5.81: Article 13.16 excludes trade and labour issues from the application of the Agreement's dispute settlement mechanism, and it provides for Government consultations as a way to deal with matters arising under Chapter 13. Article 13.17 regulates the establishment of a panel of experts for any matter that has not been satisfactorily addressed via Government consultations.**

- a. The Philippines would like to inquire how the Parties intend to operationalize the consultation on trade & environment issues as well as labour protection in lieu of the non-application of the dispute settlement mechanism.**

#### Response from the Parties

The TSD provisions are subject to a specific dispute settlement mechanism, outlined in Chapter 13, Articles 16 to 17. The first steps of this mechanism consist of the possibility for a Party to request consultations with the other Party (Articles 13(16)2 to 6). A Party may also request that the Committee on Trade and Sustainable Development be convened to consider the matter (Articles 13(16)4 and 5). If the matter has not been satisfactorily resolved by the Committee on Trade and Sustainable Development, a Party may request that a Panel of Experts be convened to examine that matter (Article 13(17)1). The Panel of Experts shall issue a final report with recommendations (Articles 13(17)8 and 9). The Parties shall discuss appropriate actions or measures to be implemented taking into account the final report of the Panel of Experts and the recommendations therein.

- b. The Philippines would appreciate if the EU can expound on the specific roles of the EC's new Chief Trade Enforcement Officer in this consultation mechanism.**

#### Response from the European Union

As part of the renewed focus on implementation and enforcement, last summer the Commission appointed a Chief Trade Enforcement Officer. The CTEO is ensuring that the Commission makes better and more effective use of its existing enforcement tools.

### **Electronic commerce**

**1.29. Paragraph 58.3: Section F of Chapter 8 covers electronic commerce. The Parties agree to promote, through cooperation, the development of electronic commerce between them (Article 8.50) and they agree not to impose custom duties on electronic transmissions (Article 8.51). Regulatory cooperation on electronic commerce is provided for in Article 8.52.**

- a. We would appreciate if EU and Viet Nam can provide concrete examples on how to promote the development of e-commerce between them.**

#### Response from the Parties

E-commerce can be promoted through the non-application of any customs duties on electronic transmissions as well as through the cooperation on regulatory issues affecting the provision of e-commerce. The agreement leaves up to each Party to decide how to regulate those regulatory issues raised by e-commerce while it provides for the exchange of views, laws and regulations through a dialogue. Article 8.52 provides for an indicative list of issues relevant to the development of e-commerce that can be discussed in a dialogue such as the recognition of certificates of electronic signatures, certification services, etc.

Besides promotion activities about the Agreement, Viet Nam is in the midst of establishing a B2B e-marketplace focused on the EU market. This e-marketplace will serve as a link between Vietnamese firms and international partners, particularly those in the EU. Other provincial portals in

various industries will be linked to the e-marketplace. In order to encourage and maximize the benefits of participating enterprises, Viet Nam also plans to facilitate some public services through this platform.

**b. In relation to meeting the quality standards set by the EU, what initiatives have been introduced by Viet Nam to simplify its quality inspection and import/export quarantine on online sales?**

Response from the Parties

The promotion of the Agreement is regularly undertaken in the EU as well as in Viet Nam. EU Member States as well as the EU Delegation in Viet Nam regularly connect to local and EU business with a view to explain the Agreement and how to benefit from it.

The EU has widely publicized the Agreement and its contents, which are published on a dedicated website with specific fact sheets and guidelines easing the use of the Agreement. The EU has also created a series of user-friendly tools, such as Access2Markets, ROSA, which aim at making operators aware of the benefits deriving from the Agreement and how to obtain them.

A Decree on Customs Export/import for E-commerce is being drafted to facilitate cross-border e-commerce as well as to support the implementation of FTAs/RTAs. One of its key goals is to streamline customs procedures and digitalize custom documentations for easier e-transactions. Decree on Customs Export/import for E-commerce is being drafted to facilitate cross-border e-commerce as well as to support the implementation of FTAs/RTAs. One of its key goals is to streamline customs procedures and digitalize custom documentations for easier e-transactions.

**Other questions**

**1.30. In the one (1) year since the entry into force of the FTA, what measures have been undertaken or will be undertaken to promote the utilization of the FTA by both the EU and Viet Nam?**

Response from the Parties

The promotion of the Agreement is regularly undertaken in the EU as well as in Viet Nam. EU Member States as well as the EU Delegation in Viet Nam regularly connect to local and EU business with a view to explain the Agreement and how to benefit from it.

The EU has widely publicized the Agreement and its contents, which are published on a dedicated website with specific fact sheets and guidelines easing the use of the Agreement. The EU has also created a series of user-friendly tools, such as Access2Markets, ROSA, which aim at making operators aware of the benefits deriving from the Agreement and how to obtain them.

For Viet Nam, right after the Agreement entered into force, the Government issued the Decision No. 1201/QĐ-TTg dated 06 August 2020 on approval of the Plan for implementation of the EVFTA in which the Government set out 5 categories of action for the effective implementation of the FTA. 5 categories are: (1) Dissemination of the EVFTA information; (2) Legal and institutional building; (3) Improving competitiveness and human resources; (4) Developing guidelines and policies for employees and workers' organizations; and (5) Developing policies on social security, environmental protection and sustainable development.

**1.31. What concessions were of significant importance to the EU and Viet Nam, respectively, in entering and concluding the negotiations for the FTA? Further, were there any products being exported by Viet Nam to the EU under the EU GSP whose tariffs were not automatically eliminated upon entry into force of the FTA? If yes, how did both sides address the issue to ensure balance in the agreed tariff concessions?**

Response from the Parties

Improved market access in a varied range of agricultural, fisheries and industrial sectors were of interest to each side during the negotiations. The outcome of negotiations and the exchange of concessions between the Parties are now enshrined in the Free Trade Agreement.

The FTA offers in general terms better market access than GSP to Viet Nam, in terms of tariffs and suitable Rules of Origin. The Agreement stipulates that the EU preferential customs duty under the Agreement shall in no circumstances be higher than the EU customs duties applied to goods originating in Viet Nam on the day before the date of entry into force of the Agreement and this obligation applies from that date until the seventh year after entry into force. For some products, market access conditions at entry into force will be gradually improved over a number of years. The guideline published under: [https://ec.europa.eu/taxation\\_customs/system/files/2021-06/evfta\\_guide.pdf](https://ec.europa.eu/taxation_customs/system/files/2021-06/evfta_guide.pdf), provides explanatory elements on the relation between the Free Trade Agreement and the GSP conditions.

**1.32. Noting that discussions between the EU and Viet Nam for an FTA commenced in as early as 2015, how did Brexit factor into the negotiations and conclusion of the same? Further, also in view of Brexit, how do both sides assess the loss of potential gains that the United Kingdom could have contributed to the FTA in terms of investments and market access for both goods and services?**

Response from the European Union

The EU-Viet Nam FTA negotiations were concluded in December 2015, prior to the date of the UK referendum of 23 June 2016.

**1.33. The Philippines would like to ask Viet Nam's experience in complying with its FTA commitments on IPR protection, particularly on updating its legal framework and enhancing its enforcement landscape.**

Response from Viet Nam

In order to comply with the IP commitments in the EVFTA, Viet Nam has reviewed our legal documents on IP to propose necessary amendments and supplements for those documents. Currently, the Intellectual Property Law is being amended to ensure the implementation of Viet Nam's international commitments on IP protection, which is expected to be passed in June, 2022. For some commitments that require immediate implementation when EVFTA takes effect, Viet Nam has directly applied these commitments since the National Assembly ratified the EVFTA (Resolution No. 102/2020/QH14 dated June 08, 2020).

To ensure the effective enforcement of IP rights, the draft version of the revised Intellectual Property Law amended some provisions such as allowing Customs to act on their own in respect of application of border measures. Viet Nam also focus on training IPR enforcement officers to improve capacity, as well as disseminating IP commitments in EVFTA to the public and businesses through workshops, media, etc. to improve their awareness on IP protection.

**1.34. Kindly explain the impact and consequences of Brexit on the implementation of the Free Trade Agreement between the European Union and Viet Nam?**

Response from the European Union

The negotiations of the EU-Viet Nam Agreement were concluded before the UK Referendum.

There are no specific consequences to report on the implementation of the Agreement since its entry into force.

**Questions from the Separate Customs Territory of Taiwan, Penghu, Kinmen, and Matsu**

**Provisions on trade in goods**

**Regulatory provisions on trade in goods**

**Bilateral safeguards**

**1.35. Paragraph 3.57: The Party applying a bilateral safeguard measure shall provide an opportunity for consultations in order to mutually agree on appropriate trade liberalizing compensation no later than 30 days after the application of the bilateral safeguard**

measure (Article 3.13). Compensation can be in the form of concessions having substantially equivalent trade effects or concessions equivalent to the value of the additional duties expected to result from the safeguard measure. If the consultations do not result in an agreement on compensation within 30 days, the Party whose goods are subject to the safeguard measure may suspend the application of concessions having substantially equivalent trade effects.

We would appreciate that the EU and Viet Nam share their experiences on initiating investigations, implementing measures, and conducting consultations on compensation regarding bilateral safeguard measures.

#### Response from the Parties

Since the entry into force of the EU-Viet Nam Free Trade Agreement, no use has been made of bilateral safeguards.

### **Provisions on trade in services**

#### **General provisions on trade in services**

##### **National treatment and MFN**

**1.36. Paragraph 4.12: An MFN provision for investment is included in Article 8.6 such that a Party shall accord to investors of the other Party and to their enterprises, as regards their operation in its territory, treatment no less favourable than the treatment it accords, in like situations, to investors of a third country and their enterprises with some exclusions related to bilateral, regional or multilateral agreements. MFN treatment does not apply to communication services except postal and telecommunication services, recreational, cultural and sporting services, fishery and aquaculture, forestry and hunting and mining, including oil and gas.**

**Please explain the rationale, including policy rationale, for the MFN treatment exclusions with respect to each of the excluded sectors, namely communication services (excluding postal and telecommunication services), recreational, cultural and sporting services, fishery and aquaculture, forestry and hunting, and mining (including oil and gas).**

#### Response from Viet Nam

Within the framework of the EVFTA, the most-favored-nation treatment obligation does not apply to a number of sectors and sub-sectors. For Viet Nam, these are important areas, contributed to ensuring national security and preserving Viet Nam's cultural values. Therefore, Viet Nam needs to make an exception and maintain policy space for these areas.

### **Regulatory provisions**

#### **Recognition**

**1.37. Paragraph 4.56: Article 8.21 covers mutual recognition of professional qualifications. The Parties shall encourage the relevant professional bodies in their respective territories to develop and provide a joint recommendation on mutual recognition to the Committee on Investment, Trade in Services, Electronic Commerce and Government Procurement, established under Article 17.2, without preventing a Party from requiring that natural persons possess the necessary qualifications and/or professional experience specified in the territory where the service is supplied, for the sector of activity concerned.**

**Given the diversities of professional services, it might not be necessary for every professional service to possess mutual qualifications for providing services. Is there a list in the Annex indicating those sectors that have acquired mutual recognition?**

### Response from the Parties

Indeed, not for all professional services particular qualifications are required. However, there is no annexed list covering this matter and it would not be reasonable to attempt setting it up. On the EU side, the Member States are competent to determine the necessity and the level of professional qualifications for each professional service supplied within their jurisdiction whereas the EU is in charge of the negotiation of mutual recognition agreements on such qualifications. Given the multitude of professional services and the fact that the EU has 27 Member States, such a table would have to contain thousands of entries that would have to be updated at regular intervals. No mutual recognition agreement on professional qualifications has been concluded between the EU and Viet Nam yet.

### **General provisions of the agreement**

#### **Electronic commerce**

**1.38. Paragraph 5.83: Section F of Chapter 8 covers electronic commerce. The Parties agree to promote, through cooperation, the development of electronic commerce between them (Article 8.50) and they agree not to impose custom duties on electronic transmissions (Article 8.51). Regulatory cooperation on electronic commerce is provided for in Article 8.52.**

**Could the EU and Viet Nam please elaborate on how they intend to promote the development of e-commerce through regulatory cooperation?**

### Response from the Parties

E-commerce can be promoted through the non-application of any customs duties on electronic transmissions as well as through the cooperation on regulatory issues affecting the provision of e-commerce. The agreement leaves up to each Party to decide how to regulate those regulatory issues raised by e-commerce while it provides for the exchange of views, laws and regulations through a dialogue. Article 8.52 provides for an indicative list of issues relevant to the development of e-commerce that can be discussed in a dialogue such as the recognition of certificates of electronic signatures, certification services, etc.

#### **Domestic regulation**

**1.39. Paragraph 4.54: Rules on domestic regulation are contained in Sub-Section 1 of Section E of Chapter 8. They apply to measures of a Party relating to licensing or qualification requirements and procedures that affect the cross-border supply of services, establishment and temporary stay for natural persons of the other Party in the territory of the Party (Article 8.18). The application is limited to the sectors for which the Parties have undertaken specific commitments. Domestic regulation provisions do not apply to measures scheduled as limitations on market access under Articles 8.4 and 8.10 or national treatment under Articles 8.5 and 8.11.**

**According to paragraph 4 of Article VI of the GATS, the scope of domestic regulation covers measures relating to qualification requirements and procedures, technical standards and licensing requirements. Could the EU and Viet Nam please explain why technical standards are not covered?**

### Response from the Parties

The EU and Viet Nam are indeed already subject to domestic regulation disciplines pursuant to GATS VI. In addition to these disciplines, the EU and Viet Nam decided to include more domestic regulation disciplines in the FTA (see article 8.18 to 8.20) in Sub-Section 1 (Domestic Regulation) of Section E (Regulatory Framework) of Chapter 8 (Liberalization of Investment, Trade in Services and electronic commerce) of the Agreement. These bilateral domestic regulation provisions are therefore top-ups to the multilateral provisions of GATS VI. Measures relating to technical standards are covered by Sub-Section 1 if they meet the description of the measures covered by the Sub-Section as set out in paragraphs 1 to 3 of article 8.18 (Scope and Definitions).

**Questions from Switzerland****Rules of origin****1.40. Paragraph 3.26:**

- a. Is it foreseen, that the lists in Annexes III and IV shall be extended e.g. to industrial products as well?**

Response from the Parties

The Parties to the EU-Viet Nam Free Trade Agreement are not working on such extension. In general, as stipulated in Article 36 (Committee on Customs) of the Agreement, the Committee on Customs may review the provisions of the Protocol on Rules of Origin and submit a proposal to the Trade Committee to amend it, including its Annexes.

- b. Is the cumulation with other ASEAN countries' materials exclusively foreseen in case those countries have a trade agreement with the EU? Therefore, cumulation with ASEAN countries in the framework of the EU GSP Regional ASEAN Cumulation Scheme is not foreseen?**

Response from the Parties

Indeed, it is not foreseen in the Free Trade Agreement. Viet Nam and ASEAN GSP beneficiaries can benefit of cumulation under the provisions of the EU's GSP Scheme during a transition period, until 31 December 2022.

- c. What proof of origin has to be provided by the other ASEAN country? The one that ASEAN country has in its FTA with the EU?**

Response from the Parties

As stipulated in Article 3, paragraph 4 of the EU-Viet Nam FTA, the proofs of origin by the ASEAN country have to be the one as if the goods were exported to the EU under the FTA of that ASEAN country with the EU.

- d. Do the materials - on their journey from other ASEAN countries or the Republic of Korea to Viet Nam - have to fulfil the Non-alteration rule laid down in the EU-VN FTA? Or the one of another FTA? If yes, is Viet Nam obliged to check the fulfilment of this rule upon import into Viet Nam?**

Response from the Parties

As stipulated in Article 3, paragraph 3 of the EU-Viet Nam Free Trade Agreement, the applicable rules of origin for such materials shall be determined in the framework of the Free Trade Agreement of that ASEAN country with the EU, including the non-alteration rule, if any. It is indeed Viet Nam's responsibility to verify if the transport rule (non-alteration or direct transport) is complied with at the time the materials are imported in Viet Nam. The verification obligations are determined in the framework of the administrative cooperation agreements.

**1.41. Paragraph 3.30: What is the purpose of that Joint Declaration? Isn't the purpose mentioned therein already covered by Article 36 of Protocol 1 (Committee on Customs)?**Response from the Parties

The main purpose of this Joint Declaration is to commit to the regular adaptation to the periodic changes of the HS.

## **Questions from the United States**

### **Tariff rate quotas**

**1.42. Paragraph 3.21: Subparagraph 5(c) of Sub-Section 1 (Union Tariff Rate Quotas) of Section B (Tariff Rate Quotas) of Annex 2-A contains European Union tariff rate quotas for rice.**

**Please, indicate if these tariff rate quotas are modifications of existing WTO Most Favoured Nation tariff rate quotas.**

#### Response from the Parties

For the EU, these rice TRQs are not a modification of existing WTO MFN TRQs.

For Viet Nam, all of these TRQs are the same as its existing WTO MFN TRQs.

### **Subsidies and state-aid**

**1.43. Paragraph 3.64: This paragraph discusses the subsidy section in part B of Chapter 10. In 10.4.2 of the EU-Viet Nam Free Trade Agreement (FTA) the text sets out "An illustrative list of public policy objectives for which a Party may grant subsidies" and includes subsidies "for the creation of employment."**

- a. How does this provision relate to the provisions of 10.4.1 which states that "In principle, a Party should not grant subsidies to enterprises providing goods or services if they negatively affect, or are likely to negatively affect, competition and trade?"**

#### Response from the Parties

Article 10.4.1 affirms the general principle that a Party may grant subsidies when they are necessary to achieve a public policy objective. Article 10.4.2 provides an illustrative list of public policy objectives for which a Party may grant subsidies, however subject to the conditions set out in the Section.

- b. Is a subsidy granted for the creation of employment permitted even if it will have a negative effect on competition and trade?**

#### Response from the Parties

In principle, subsidies may be granted for public policy objectives, in so far as the other provisions set out in the Section are followed. The transparency obligation, consultations, and conditions on certain subsidies ensure that any negative effects of the subsidies on competition and trade are known and may be addressed.

**1.44. Paragraph 3.64: This paragraph discusses the subsidy section in part B of Chapter 10. Article 10.5.3 states that "*This Section applies to specific subsidies to all enterprises, including public and private enterprises.*"**

**Can you please confirm that the term "public and private enterprises" would include State Enterprises and enterprises under the ownership or control of the State?**

#### Response from the Parties

Yes, the provision covers all enterprises, independently of their ownership, and therefore covers also State Enterprises and enterprises under the ownership or control of the State.

**1.45. Paragraph 3.66: Why do the consultation provisions of Article 10.8 not apply to subsidies with conditions covered in Article 10.9?**

Response from the Parties

The consultations provisions of Article 10.8 are intended to obtain more information and to minimize any negative effects of subsidies that may negatively affect the trade or investment interests of the other Party. By contrast, the subsidies subject to conditions in Article 10.9 fall under a stricter discipline whereby those subsidies shall not be granted unless the conditions are followed.

**1.46. Paragraph 3.67: In Article 10.9.1 it states that "*The Parties shall apply conditions to the following specific subsidies.*"**

**What are the conditions that shall be applied to the specific subsidies?**

Response from the Parties

The conditions that shall be applied to the specific subsidies are as following: (i) a legal arrangement whereby a government or any public body is responsible for covering debts or liabilities of certain enterprises is allowed, provided that the coverage of the debts and liabilities is limited as regards the amount of those debts and liabilities or the duration of that responsibility (Article 10.9.1(a)) and (ii) support to insolvent or ailing enterprises in various forms, such as loans and guarantees, cash grants, capital injections, provision of assets below market prices, and tax exemptions, with a duration of more than one year is allowed provided that a credible restructuring plan has been prepared, which is based on realistic assumptions with a view to ensuring the return of the enterprise to long-term viability within a reasonable time and with the enterprise itself contributing to the costs of restructuring. (Article 10.9.1(b)). For clarity, this condition does not prevent the Parties from providing temporary liquidity support in the form of loan guarantees or loans limited to the amount needed to keep the enterprise in business for the time necessary to work out a restructuring or liquidation plan.

**Import duties and charges, and quantitative restrictions****General provisions**

**1.47. Paragraph 3.7 under section 3.1 on "Import duties and charges, and quantitative restrictions," sub-section 3.1.1 on "General Provisions", indicates that Article 2.17 of the EU-Viet Nam FTA states that each party shall notify the other party of its existing export licensing procedures.**

**Does either party currently maintain export licensing procedures and if so please provide a list of such procedures?**

Response from the Parties

The EU and Viet Nam have notified to each other their respective export licensing procedures, which apply to a number of goods traded between the Parties.

**Transparency**

**1.48. Paragraph 5.1 on Transparency: Rules governing general transparency disciplines are contained in Chapter 14. Articles 14.1 through 14.7 provide for objectives and scope, definitions, publication, enquires and contact points, administration of measures of general application, review and appeal, good regulatory quality and administrative behaviour.**

**Article 14.7 of the Agreement provides an opportunity for the EU and Viet Nam to exchange information and best practices on their respective regulatory reform processes and regulatory impact assessments. Have any exchanges on these topics taken place since the agreement entered into force?**

Response from the Parties

The EU and Viet Nam have regular contacts to implement fully the agreement and exchange information on their regulatory activities.

Since the entry into force, Viet Nam and the EU have held several technical level meetings on general implementation of the EVFTA as well as meetings of the specialized committees established by the EVFTA to consider any matter arising in their respective areas as well as carry out their respective tasks during implementation, exchange views and update on specific topics of interest, as well as share best practices on effective implementation of the FTA.

### **Intellectual property rights**

**1.49. Paragraph 5.47: "Article 12.28 of the EU-Viet Nam FTA provides an exception to geographical indications protection that allows "any persons ... who made actual commercial use in good faith" of the terms asiago, fontina, and gorgonzola in the Vietnamese market before January 1, 2017, to be able to continue using those terms for those products, even after the entry into force of the EU-Viet Nam FTA.**

**a. Can Viet Nam explain how it is defining "any persons" for the purposes of implementing Article 12.28?**

Response from the Parties

From the EU's perspective both expressions find their roots in TRIPS provisions i.e. art. 24.4 (use in good faith) and art. 24.8 (any persons). They are commonly used in IP law, TRIPS as well in FTA agreements.

The terminology "any persons" coincides with the legal concepts of any "legal or physical/natural person".

The terminology "use in good faith" or "good faith" is mentioned in several provisions of TRIPS. Article 24 contains three references to good faith. These references relate to the "good faith" of the nationals of WTO Members in applying for or registering trademarks. Articles 48.2 and 58(c) of the TRIPS Agreement refer to the "good faith" of public authorities or officials in administering laws for the protection or enforcement of intellectual property rights. In the context of Article 12.28 of the EVFTA in our understanding it means that the said persons did not have the intention to take unfair advantage or they had reasonable belief that that their actions were not contrary to existing legal principles within the relevant jurisdiction (i.e. in Viet Nam).

**b. Can Viet Nam explain how it is defining "actual commercial use in good faith" for the purposes of implementing Article 12.28?"**

Response from the Parties

"Actual commercial use" is understood as the "use" (as referred to in Article 124 of Viet Nam's IP Law, i.e. sale, import, advertisement etc.) in the "commercial activity" (as referred to in Article 3.1 of Commercial Law, i.e. activities for the purpose of generating profits) and this "commercial use" must be "actual" (i.e. real action on the market in Viet Nam, is opposed to token or artificial use designed or conducted solely to acquire the right to use the protected names).

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