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Additional Questions and Replies

The Government of the Socialist Republic of Viet Nam has submitted replies to additional questions concerning the Memorandum on the Foreign Trade Regime of Viet Nam, 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 document WT/ACC/VNM/9 and other relevant documents.

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II. ECONOMY, ECONOMIC POLICIES AND FOREIGN TRADE

2. Economic Policies

(a) Main directions

Question 1

We would be interested in further clarification of the process of “equitization” of state owned enterprises. For example, in the answer to Question 22 (page 10) Viet Nam notes that such enterprises are to be classified into three groups, the first of which “will be maintained to ensure firmly the vital role in the process of development”. Does this mean that non-state involvement in the ownership and management of enterprises in this category will not be permitted? Which enterprises fall into this category?

Answer:

Pursuant to the Prime Minister’s Directive No. 20/1998/CT-TTg dated 21 April 1998 on promoting the restructuring, rearrangement and reform of the State-owned enterprises and the Decree No. 44/1998/ND-CP dated 29 June 1998 on transforming the State-owned enterprises into joint-stock companies, the State-owned enterprises are divided into 3 groups, among which those classified as Group I – Existing State-owned enterprises that shall not be equitized yet – include important State-owned enterprises which need to be maintained to ensure firmly their vital and core role in the process of national industrialisation and modernisation as follows:

1. Public-interest State-owned enterprises as specified by Article 1, Decree 56-CP dated 2 October 1996 of the Government, including:
 - Enterprises which manufacture and/or repair weapons, ammunitions, equipment specialized for national defence, security and public-interest enterprises belonging to national defense sector;
 - Enterprises which manufacture other public products, supply other public services with at least 70 per cent of their revenue arising from the following activities:
 - Urban public works and public transportation;
 - Management, exploitation, maintenance of infrastructure: national railway, road, waterway network, airport, air traffic control, maritime safety, ship navigation in and out of harbours; technical inspection of road and waterway means of transport; examination, control and distribution of electrical radio frequency;
 - Exploitation and protection of irrigation works;
 - Production of original breed of plants and animals;
 - Publication and distribution of school books, politics books and newspapers; Production and distribution of newsreels, documentary films, films for children; Production and provision of salt, film showing to cater for people living in high-land, borderland and island areas; Production and supply of other products and services in accordance with the State’s social policies).

The equitization of these public-interest State-owned enterprises with the State’s capital level being above VND 10 billion must be approved by the Prime Minister. The equitization of these public-interest State-owned enterprises with the State’s capital level being under VND 10 billion shall be decided by Minister, Chairman of People’s committee of provinces or cities directly under the Central management.

2. Enterprises which manufacture products or provide services under the State's monopoly:
 - Explosive materials;
 - Toxic chemicals;
 - Radioactive materials;
 - Printing money and papers of monetary value (valuable notes);
 - National and international telecommunications gateways and networks.

Hence, among these two types of Group I State-owned enterprises mentioned above, only those falling into Type 2 are the State's monopoly enterprises where the State holds 100 per cent of their capital. Those falling into Type 1 are public-interest enterprises necessary for national welfare and people's livelihood, hence, the State must get involved. The State does not prohibit other economic sectors from engaging in the ownership and management of enterprises of Type 1.

Question 2

Re Question 21, while foreign organisations and individuals are allowed to buy shares in the joint-stock companies operating in a number of listed sectors, e.g. textile, food processing, construction, etc. a further category is included, namely "Export producing enterprises which operate in the above sectors". Does this imply that it is only in export producing firms in the listed sectors that foreign purchases of shares are permitted?

Answer:

The Regulation on sale of equities to foreign investors issued with Decision No. 145/1999/QD-TTg dated 28 June 1999 of the Prime Minister specifies that enterprises entitled to sell their equities to foreign investors are those conducting production and business activities in the following sectors (including State-owned enterprises which have been equitized and Joint-stock companies and enterprises of other types which have obtained the competent authorities' approval for issuance of shares for their transformation into joint-stock companies):

1. Textiles and garments;
2. Footwear;
3. Leather-processing;
4. Production and processing of agricultural, forestry and marine products;
5. Production of other consumer goods;
6. Production of construction materials;
7. Road transportation, inland waterway transportation and container merchandise transportation;
8. Production of school stationery and learning instruments;
9. Production of children toys;
10. Trading, hotel and hotel-related services;
11. Mechanical engineering manufacture;
12. Enterprises producing export goods belonging to the above mentioned sectors.

As a result, enterprises which produce goods for domestic consumption and exportation belonging to the sectors from 1 to 11 as mentioned above are all permitted to sell shares to foreign investors.

Question 3

Re Question 2, please specify the means by which a special shareholding by the State is held in the second category of Group 2 companies.

Answer:

Pursuant to the Prime Minister's Directive No. 20/1998/CT-TTg dated 21 April 1998 on promoting the restructuring, rearrangement and reform of the State-owned enterprises, ministries and agencies must classify and rearrange the State-owned enterprises on the principle: Group II includes enterprises of which the ownership structure is required to be transformed, being enterprises where the State does not need to hold 100 per cent of their capital. It is also required to define clearly in this Group the enterprises where the State needs to hold the controlling or special shares so that representatives of the State ownership shall occupy the executive role. The List of the State-owned enterprises selected for equitization, which is issued as Annex to the Decree No. 44/1998/ND-CP dated 29 June 1998 on transforming the State-owned enterprises into joint-stock companies, specifies types of existing State-owned enterprises where the State needs to hold the controlling or special shares as follows:

- Public-interest State-owned enterprises with capital above VND 10 billion;
- Enterprises engaged in exploitation of precious and rare ores;
- Enterprises engaged in large-scale mineral exploitation;
- Enterprises providing technical services relating to oil and gas exploitation;
- Enterprises engaged in production of fertilizers, insecticides, pharmaceuticals and pharmacochemicals;
- Enterprises engaged in large-scale production of non-ferrous metals and precious and rare metals;
- Enterprises engaged in large-scale electricity production, electricity transmission and distribution;
- Enterprises engaged in aircraft repairing ;
- Enterprises providing post and telecommunications services;
- Enterprises engaged in railway, airway and maritime transportation;
- Enterprises engaged in printing, publishing and large-scale production of alcohol, beer, and cigarettes;
- Investment banks, banks for the poor;
- Enterprises engaged in trading of gasoline on a large scale.

The Directive No. 20/1998/CT-TTg also provides that the establishment of new joint-stock companies shall comply with the provisions of the Company Law.

The State's special shares constitute the State's shares in a joint-stock company where the State does not hold controlling shares but has the right to decide certain important issues of the company as specified in the Company Charter (pursuant to the Circular No. 104/1998/TT-BTC dated 18 July 1998 providing guidance on financial matters when the State-owned enterprises are transformed into joint-stock companies).

Therefore, the way in which the State holds the special shares in the State-owned enterprises of Group II is the State's right to decide certain important issues of the joint-stock company as specified in the Company Charter.

Question 4

The response to Question 4 in WT/ACC/VNM/7 mentions “Viet Nam is taking necessary steps to improve its statistics collecting system.” Could Viet Nam provide more specifics on the steps being taken?

Answer:

Viet Nam has undertaken a number of particular activities to gradually improve the effectiveness and quality of the national statistics system, including:

- Upgrading the statistical facilities and equipment;
- Coordinating the concerned agencies to get involved in the statistical data providing system;
- Training staff involved in statistics data collection and analysis;
- Establishing and computerizing the existing statistics database system;
- Studying to apply some international statistical standards such as SITC, HS.

Question 5

Re Question 5, could Viet Nam specify the type of trade-related privileges that labour intensive industries are entitled to receive.

Answer:

Pursuant to Article 15, Decree No. 51/1999/ND-CP of the Government dated 8 July 1999 providing details to implement the amended Law on Domestic Investment Promotion (Law No. 3/1998/QH 10):

- Investment projects satisfying the following conditions will be eligible for investment incentives:

Investment projects in manufacturing or trading in sectors that are not prohibited by law, which annually employ at least an average number of:

- a. 100 employees in those cities falling into Category 1 and Category 2:

(City of Category 1 is very large city, an economic, political, cultural-social, science and technology, tourism-services, transportation, industrial, international interchange centre which takes a significant role in boosting the whole nation's development, with a population of at least 1 million, having a high merchandise production ratio, non-agricultural labour ratio of at least 90 per cent of total labour force, a well-integrated technical infrastructure and public facility network, and an average population density of 15,000 people per km² or above;

City of Category 2 is large city, an economic, cultural-social, industrial, tourism-services, transportation, international interchange centre which takes a significant role in boosting a region's development, with a population of between 350,000 and under 1 million, growing merchandise production, non-agricultural labour ratio of at least 90 per cent of total labour force, a nearly-integrated technical infrastructure and public facility network, and an average population density of 12,000 people per km² or above;

Cities of Category 1 and Category 2 are mainly under the Central management)

- b. 20 employees in socially and economically difficult areas or areas under socially and economically harsh conditions;
- c. 50 employees in areas other than above cities and areas:
 - Investment incentives may include:
 - Exemption, reduction of land rental;
 - Exemption, reduction of land use tax;
 - Longer periods of corporate income tax exemption and reduction.

Details of types of investment incentives and preferential treatment applicable to specific projects are stipulated in relevant articles and provisions of the above-mentioned Decree No. 51/1999/ND-CP.

Question 6

Re Question 9 and document WT/ACC/VNM/10, could Viet Nam provide more details on the introduction of a single price tariff (i.e. timetable and products affected). Has the Ordinance on price control policy been issued? What is its content?

Answer:

Up to the end of 2000, Viet Nam's dual pricing mechanism is only applied to electricity price and domestic-route airfare.

Over recent years, Viet Nam has made positive moves towards gradually narrowing the pricing gap between Vietnamese residents and foreigners. For instance, Viet Nam issued the Inter-Ministerial Circular No. 10/2000/TTLT-BKH-BTP-BNG-BCA dated 15 August 2000 by the Ministry of Planning and Investment, Ministry of Justice, Ministry of Foreign Affairs and Ministry of Public Security guiding the investment made by the overseas Vietnamese, foreign residents in Viet Nam in accordance with the Decree No. 51/1999/ND-CP dated 8 July 1999 of the Government providing details to implement the amended Law on Domestic Investment Promotion (Law No. 3/1998/QH 10). This Inter-Circular has provisions that enterprises directly invested in Viet Nam by expatriates in Viet Nam (who have been issued a Card of Permanent Residence in Viet Nam by the Vietnamese competent authority) which has investment projects in accordance with the Law on Domestic Investment Promotion shall be entitled to the same input price regarding land, merchandise, materials, fuels, and other services priced by the Government and the same tax rate as those applicable to domestic investment projects of the same category. In addition, the above expatriate investors shall be entitled to the same service price regarding housing, hotel, electricity, water, medical care services, domestic transportation fare by waterway, by road, by air, postal and telecommunications charges and educational and training fees as those applicable to Vietnamese citizens in Viet Nam.

Decision No. 809/2000/QD-TCBD dated 15 September 2000 of General Department of Post and Telecommunications, which took effect as from 1 October 2000, has provided for the imposition of unified telecommunications charges regardless of services users.

According to the submitted Action Plan for the implementation of pricing policy, Viet Nam shall apply single price tariff after 2005.

As scheduled in the Legislation Programme of the Vietnamese National Assembly, the Ordinance on Price shall be approved in 2002. It is confirmed in the draft Ordinance on Price that the State respects the autonomy of enterprises in pricing, facilitates and encourages enterprises to

lawfully compete on prices and the State only intervenes in market prices under necessary circumstances (for example, to control monopoly price, monopoly alliance, to prevent domestic dumping, etc.) to protect the legitimate interests of producers, consumers and the State.

(b) Monetary and fiscal policies

Question 7

Re Question 24, how the Production Protection Fund can be considered consistent with WTO rules? Please specify the type and value of fees and charges imposed on exports and imports to finance the Fund.

Answer:

Please refer to the answer to Question 24 of the document WT/ACC/VNM/9: Viet Nam does not have the Production Protection Fund.

(d) Foreign and domestic investment policies

Question 8

In response to Question 40 (page 18), Viet Nam acknowledges that “gradual elimination of the discriminatory conditions between domestic and foreign investors is one of the most important issues to be addressed”. Can the Vietnamese authorities indicate how and within what timeframe they intend to address this issue?

Answer:

At present, most of the regulations discriminating between domestic and foreign investors have been abolished by the Government. Basically, there are no longer substantial differences between these two categories of investors, even concerning enterprises' establishment, maintaining, management and control.

Question 9

We would be interested in more information on the Vietnamese Government's consideration of allowing “joint ventures investing in certain sectors, where Vietnamese party is no longer able to joint business, to be shifted to wholly foreign-owned enterprises” (answer to Question 165, page 64). What stage has this consideration reached? Does it apply only to already established joint ventures, or will new, wholly foreign-owned enterprises be permitted?

Answer:

Pursuant to the Law on amendments and supplements to some Articles of the Law on Foreign Investment dated 9 June 2000, foreign-invested enterprises are permitted to change their forms of investment, divide, separate, consolidate and merge with other enterprises during the course of their operations. Pursuant to the Decree No. 24/2000/ND-CP dated 31 July 2000 of the Government stipulating in details the implementation of the Law on Foreign Investment in Viet Nam, existing joint-ventures can be permitted to change into 100 per cent foreign capital enterprises.

Also pursuant to the Law on Foreign Investment, foreign investors are entitled to make their own decisions concerning the enterprise form of investment, including 100 per cent foreign capital enterprises (except for investments falling into the List of sectors where investments are subject to certain conditions as specified in the Decree No. 24/2000/ND-CP).

(e) Competition policies

Question 10

Re Question 43, please update the Working Party on the status of the Competition Law.

Answer:

The 4th session of the 10th legislature of the National Assembly has issued the Resolution No. 19/1998/QH10 dated 20 December 1998 on Legislation Program of the year 1999, in which Ministry of Trade is assigned to keep the chief role in drafting the Competition and Anti-trust Law. Viet Nam has so far undertaken the following works:

- Establishing the Board for drafting the Competition and Anti-Trust Law and the Editing Unit;
- Studying international experiences of competition legislation;
- Studying legislative framework in such international organizations as UNCTAD, OECD;
- Discussing fundamental issues which need to be dealt with in the Competition and Anti-trust Law;
- Reviewing the legislative system of Viet Nam;
- Making the initial drafts of chapters, articles of the Competition and Anti-trust Law (scheduled to be submitted to the National Assembly for approval in 2002).

IV. POLICIES AFFECTING TRADE IN GOODS

1. Import Regulation

(a) Registration Requirements for engaging in importing

Question 11

Trading rights: The current system grant a preference to national companies over foreign ones. During the Working Party Viet Nam affirmed that it intends to eliminate the discrimination. We are pleased by such an engagement by Viet Nam and we seek clarification on the way Viet Nam intends to follow to fulfil this commitment.

Answer:

Please refer to the answer to Question 12.

Question 12

The replies to Questions 61-65 in WT/ACC/VNM/9 confirm that foreign-invested firms do not have the same rights to import, import for resale, or export as Vietnamese firms. As we have noted previously, this system denies imported goods national treatment, as required by GATT Article III, and could be seen as a non-tariff barrier to importation, which is prohibited by GATT Article XI.

Viet Nam should begin now to eliminate this discriminatory system, and complete the process prior to accession. Both domestic and foreign individuals and firms should be able to import inputs and finished goods for resale, and to export without any restriction other than restrictions consistent with GATT Article XX and XXI.

We look forward to receiving Viet Nam's specific proposals on how this should be accomplished.

Answer:

Viet Nam shall take the comments made by the Working Party members into due consideration and shall adequately deal with this issue when tabling the elimination schedule of existing non-tariff barriers in WTO accession negotiations.

Question 13

The reply to Question 63 in WT/ACC/VNM/9 describes how imports are restricted to items specified in the investment licence or the Business Registration Certificates of importers. This serves as a cumbersome barrier to trade and violates the requirement in GATT Article XI that state "No prohibitions restrictions other than duties, taxes or other charges... shall be instituted or maintained by any contracting party on the importation of any product of the territory of any other contracting party..."

Prior to accession, Viet Nam should revise this system so that trade will not be limited to items specific in investment licenses or Business Registration Certificates. The only restrictions on trade should be measures consistent with GATT Articles XX and XXI and other such provisions of the WTO.

Answer:

Regarding the importation of foreign-invested firms, please refer to the answer to Question 12.

Regarding the importation of Vietnamese firms, Vietnamese traders are permitted to import products as registered in Certificate of Business Registration except those falling into the list of prohibited imports and exports. This provision does not amount to an import restriction as Vietnamese traders are free to define their scope of business (trading lines); hence they are free to determine the list of imports indicated in their Certificate of Business Registration.

(b) Characteristics of national tariff

Question 14

Viet Nam stated (Question 74 of WT/ACC/VNM/9) that "detailed data on each imported commodity by 6 digit HS code in electronic format will be provided upon specific request." It might be useful to provide the Working Party with a full set of such import data. Proceeding this way might be less time-consuming and more transparent than answering each specific request of the Working Party members.

Answer:

Detailed data on Viet Nam's import-export statistics for the year 1997 by 6-digit HS code in electronic version is provided in document WT/ACC/VNM/16/Add.1. (However, the commodity description is only available in Vietnamese.)

Question 15

In response to Question 75 of WT/ACC/VNM/9 Viet Nam stated that it may impose additional import duty for goods originating from the countries which discriminate goods originating from Viet Nam on the basis of tariff or other measures. Please indicate the criteria you use to determine that the treatment by other countries of goods originating from Viet Nam is discriminatory.

Answer:

As referred in the answer to Question 75 of the document WT/ACC/VNM/9, Viet Nam presently does not have any specific provisions regulating this case. Consequently, it is not possible to indicate detailed criteria. Please refer to the answer to Question 17.

Question 16

In WT/ACC/VNM/9 responses 70 and 71, Viet Nam states that although it joined the HS convention effective 1 January 2000, it will not fully implement it as the national tariff nomenclature for three to five years.

How does Viet Nam expect to negotiate its WTO tariff schedule unless it can express its applied tariff rates in the same HS system as it will implement them?

For the purposes of goods market access negotiations in the context of WTO accession, Viet Nam must convert to the Harmonized Tariff System, so it should do so as quickly as possible.

Answer:

Tariff negotiations between Viet Nam and WTO Members shall be conducted in the manner commonly used in tariff negotiations among countries. The implementation shall comply with its tariff concession or tariff binding commitments in accordance with Article II (1b) of GATT 1994 and other relevant provisions of the WTO as well as Viet Nam's particular situation.

Viet Nam's import-export tariff nomenclature, in fact, has basically been in accordance with the WCO's HS system. In particular:

- Viet Nam's tariff nomenclature has fully complied with the HS nomenclature at 6-digit level. Some subheadings, however, have not yet been consistent with the 8-digit HS and therefore, are being adjusted step by step;
- At the same time, Viet Nam is now joining with other ASEAN members to establish the 8-digit ASEAN Harmonised Tariff Nomenclature (AHTN), which is foreseen to be effective in one or two years. This AHTN is also in full compliance with the 6-digit HS.

Please refer to the answer to Question 36.

Question 17

The response to Question 75 in WT/ACC/VNM/9 states “According to current law on import and export tariff, Viet Nam may impose additional import duty for goods originating from countries which discriminate against goods originating from Viet Nam on the basis of tariff or other tariff measures”. The response to the Question 21 states that “other discriminatory treatment measures may be any measure which another country applied for discriminatory purpose in order to cause barrier to Vietnamese originated food to that country’s market”.

Can Viet Nam confirm that, after WTO accession, any tariff or non-tariff measures taken in response to discriminatory treatment, will be considered with all relevant WTO rules?

Answer:

Viet Nam ensures that after its WTO accession, any measure taken by it in response to discriminatory treatment shall be consistent with regulations then applied by the WTO members.

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

Question 18

In response to Question 82 of WT/ACC/VNM/9 Viet Nam states that the Government has just issued Decree No. 04/1999/ND-CP dated 30 January 1999 on fees/charges under state budget, and that it can provide required information only after issuance of legal documents stipulating customs charges in details. Have the legal documents stipulating customs charges in detail been issued in the meantime? Could Viet Nam 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:

General Department of Customs collects customs fees pursuant to:

- Decree No. 04/1999/ND-CP dated 30 January 1999 of the Government on fees/charges under the State budget; and
- Chapter IV of Decree No. 16/1999/ND-CP dated 27 March 1999 of the Government on customs procedures, customs supervision and customs fees.

Ministry of Finance and General Department of Customs issued Inter-Ministerial Circular No. 71/2000/TTLT/BTC-TCHQ dated 19 July 2000 providing for guidelines on customs fees collection and usage management.

According to this Inter-ministerial Circular, customs fees consist of the following fees:

- Customs clearance fees: provides for fees rates applicable to different kinds of imported/exported goods calculated on the basis of quantity of goods;
- Fees for customs warehousing cargo and luggage (customs warehouse fees): provides for fees rates applicable to different kinds of imported/exported goods and warehousing time;
- Cargo escorting customs fees: provides for fees rates applicable to different kinds of transport means on the basis of escorting distance (kilometres);
- Customs sealing fees: paper seal fees, lead seal fees, and seal ring fees;

- Fees for cargo and luggage transiting through Viet Nam (transit fees): provides for fees rates applicable to different kinds of transport means and transiting distance (kilometres);
- Administrative fees: for re-certification of customs documents.

Question 19

In Question 85 Members requested that the fees for fundamental infrastructure, e.g. fees for Saigon Port, be drastically reduced in order to increase foreign investment in Viet Nam. What will be your policy as regards this request?

Answer:

Fees for fundamental infrastructure in Viet Nam are based on commercial considerations. However, certain fees might be higher than the common level in cases where those new infrastructure projects have just started their operation and are in the stage of redeeming their initial capital. The general policy of Viet Nam's government is to try to reduce such fees with a view to facilitating trade and investment activities in Viet Nam.

Question 20

We are concerned that some of the extensive list of charges and fees listed in WT/ACC/VNM/13 may be applied to importers or to imported goods in a manner that provides less favourable treatment for imports compared with similar domestic goods.

Could Viet Nam identify those that are applied in a discriminatory manner to importers or foreigners?

Could Viet Nam identify those that are applied to imports or to importers, whether or not they discriminate, and indicate the nature and level of the charge or fee.

We seek a Working Party review of these fees and charges with a view to determining those that negatively impact trade and may violate Article III or Article VIII of the GATT.

Answer:

The mentioned list of charges and fees is not found in the document WT/ACC/VNM/13 as referred. Please clarify the question.

In case the question refers to the List of charges and fees issued together with the Decree No. 04/1999/ND-CP dated 30 January 1999 of the Government on fees and charges under the State Budget, it should be noticed that there is no discriminatory provisions relating to rates of fees and charges between the Vietnamese and foreigners as well as between domestic and imported goods.

Question 21

The response to Question 80 in WT/ACC/VNM/9 states that "Customs fees are stipulated in Circular No. 31/TTLB/BTC-TCHQ dated April 1993. According to this circular, when the market price fluctuates over 20 percent (price index is equal to inflation rate), the Ministry of Finance in collaboration with the General Department of Customs of Viet Nam will adjust the custom fee in compliance with the situation accordingly."

We do not believe that this practice adequately addresses the requirement in GATT Article VIII to maintain customs fees at a level that approximates the cost of the custom services rendered, i.e., since the cost of the service being rendered should not necessarily change due to the price fluctuation.

Viet Nam should undertake to revise its fee system to make it consistent with GATT Article VIII.

Answer:

The inter-ministerial Circular No. 71/2000/TTLT/BTC-TCHQ dated 19 July 2000 of Ministry of Finance and General Department of Customs providing for guidelines on customs fees collection and usage management has superseded the inter-ministerial Circular No. 31/TTLB/TC-TCHQ dated 7 April 1993, and has, as a result, annulled the above mentioned provision.

Customs fees rates as specified in the attached annexes to the inter-ministerial Circular No. 71/2000/TTLT/BTC-TCHQ have been adjusted not only in accordance with inflation rate but also to maintain customs fees at a level that approximates the cost of the customs services rendered

Question 22

Could Viet Nam provide a single document listing all the fees applied to import and export of goods and their current rate.

Answer:

Regarding customs fee rates, please refer to Annex I of this document.

Regarding rates of import-export goods price differentials surcharge, please refer to Annex II of this document.

(Article 3 of the Prime Minister Decision No. 195/1999/QD-TTg dated 27 September 1999 on the setting up, use and management of Export Promotion Fund specifies that:

The source of revenue from import-export goods price differentials shall be determines as follows:

- For import goods, it shall be the difference between the domestic selling price accepted by the market and the cost prices of the import goods, including the actual import prices with freight, the insurance fee to the port of import, import tax as prescribed by law and circulation expenses;
- For export goods, it shall be the difference between the actual export prices, not including the freight, the insurance fee and the cost prices of the export goods, including the actual buying prices, the export tax as prescribed by law and the domestic circulation fee;
- The price differentials shall be determined in percentage (%) for each goods category. For import goods, it shall be the percentage (%) of between the arising price difference and the actual import prices, including the overseas freight and the insurance fee to the port of import. For export goods, it shall be the percentage (%) between the arising price difference and the actual export prices at the port of export, not including the costs arising outside the country).

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

Question 23

List of imported items subject to NTB (Annex 1, WT/ACC/VNM/9): What is the reason for import prohibition of certain products such as "second hand spare parts of various kinds of automobile" or "below 30CV second hand internal combustion engine"? As regards the prohibition of "children toys having adversely effect in moral education and social security" - which products would, for instance, be subject to such provision?

Answer:

The rationale for import prohibition of second hand spare parts of various kinds of automobile is traffic safety, and for import prohibition of second hand internal combustion engine below 30CV is environmental protection.

Pursuant to the Decision No. 0088/2000/QD-BTM dated 18 January 2000 of the Minister of Trade to issue the Detailed List of goods subject to prohibition on trading, commercial services subject to prohibition on providing; goods, services subject to trading restrictions, conditionally traded goods, services, the following items are perceived as "children toys having adversely effect in moral education, children's health and social security":

1. Gun-shaped toys:
 - Airguns (guns which are fired by means of air pressure) or guns using compressed spring as propelling force, from which plastic bullets or other kinds of bullets are fired;
 - Guns which fire water or water vapour; guns which flare or make noises when shooting.
2. Weapon-shaped toys other than gun-shaped toys:
 - Like or in the shape of grenades, bombs, mines, explosives;
 - Like or in the shape of swords, spears, bayonets, daggers, bows and crossbows (made of all materials including wood, bamboo, ...)
3. Firecrackers of all kinds: firecrackers which make loud bangs when they are set off, fireworks, firecrackers and bullets made of explosive powder or other substances that can cause fire, burning.
4. Some kinds of virtual toys.
5. Boys in the form of cultural products (publications, cassettes, discs), electronic games which contain images, sound, actions describing brutal combats, fights, murderous attacks or other actions degrading or offending the human dignity, destroying the environment, or detrimental to children's aesthetic sense or adversely affecting to children education.
6. Computer software, electronic games of which the content incites the users to violence, prostitution.
7. Remote-controlled electrical toys that can cause interference to the operation of other equipment, devices or be unsafe for children.

8. Toys using the national flag, Viet Nam's map, leaders' pictures and photographs inconsistent with regulations, or for bad intentions.

Question 24

Could you please provide examples of concrete measures and action which are being considered with the aim of eliminating NTBs in specific areas.

Answer:

Viet Nam has unilaterally removed many quantitative restrictions over the last few years. Please refer to the answers to Question 30 and 42. For example, Viet Nam has eliminated fertilizer import quota and rice export quota.

Viet Nam will provide the elimination schedule of the existing non-tariff barriers in WTO accession negotiations.

Question 25

In WT/ACC/VNM/9 answer to Question 98, it is stated that access to the Prime Minister's Approval Process regarding the trade of prohibited imported goods is not granted for importers. Do you foresee a change in this procedure? If not, could you kindly elaborate on how the consultation process resulting in the Prime Minister's decision is prescribed and regulated? Which administrative regulations are the legal basis for this procedure?

Answer:

Viet Nam does not foresee any change in this procedure.

The approval of the Prime Minister regarding the importation of goods subject to the import prohibition is based on the consultation with relevant ministries and agencies. However, businesses can, in fact, indirectly have access to the Prime Minister's approval decision regarding their application for importing or exporting goods subject to the import/export prohibition via proposals made by their respective line management ministry/agency.

Question 26

We are encouraged by the first part of the response in WT/ACC/VNM/9, reply 86, which states that "Over the last few years, Viet Nam has significantly eliminated almost all items subject to import and export quotas. Please refer to Annex 1 on Non-tariff barriers attached herewith" and "As from 2000, Viet Nam begin remove or loosen certain existing quantitative restrictions." However, according to Annex I of VNM/9, Viet Nam still imposes quantitative import restrictions on products in four product groups.

Such quantitative restrictions are a violation of GATT Article XI, and Viet Nam should develop a plan to eliminate this practice prior to WTO accession.

We repeat our request, contained but unanswered in WT/ACC/VNM/9 "Viet Nam should also provide a timetable for each measure currently in place to eliminate it or to revise or replace it with a specific WTO consistent alternative, or present an appropriate WTO justification for retention of the measure."

Answer:

The elimination schedule of import/export quantitative restrictions will be provided in WTO accession negotiations. Please refer to the answer to Question 24.

Question 27

Viet Nam should also provide transparency for the import restrictions it has in place. In WT/ACC/VNN/9, reply 95, in response to a question on the details of what constitutes “depraved and reactionary cultural products, morally pernicious toys” Viet Nam states that “Technically, it is impossible to describe shapes, circumstances of injury causing, violence excitement or other bad consequences of a particular product.”

What is the specific legislative basis for this restriction?

What are the criteria used by custom agents to determine whether a product is covered by this restriction?

Where can traders go to get specific information on products that fall within this restriction?

Answer:

At present, there is no specific legal document stipulating the criteria for determining whether a product is covered by import prohibition for constituting “depraved and reactionary cultural products, morally pernicious toys”.

However, a general description of those products perceived as “depraved and reactionary cultural products, morally pernicious toys” which are subject to import prohibition can be found in the Government’s Decree No. 11/1999/ND-CP dated 3 March 1999 on goods subject to prohibition on trading, commercial services subject to prohibition on providing; goods, services subject to trading restrictions, conditionally traded goods, services and the Decision No. 0088/2000/QD-BTM dated 18 January 2000 of the Minister of Trade to issue the Detailed List of goods subject to prohibition on trading, commercial services subject to prohibition on providing; goods and services subject to trading restrictions, conditionally traded goods and services.

Depraved, reactionary, superstitious or morally pernicious cultural products include: books, newspapers, magazines, pictures, paintings, calendars, posters, catalogues, leaflets, circulars, handbills, pamphlets, tracts/propaganda leaflets, slogans, couplets, scrolls, sound or pictures recording tapes and discs of various kinds, films (inclusive of both cinematographic films and video films), photos, practical arts, and other cultural documents and products containing depraved, reactionary, superstitious or morally pernicious content.

Regarding morally pernicious toys, please refer to the answer to Question 23.

The main agencies responsible for issuing detailed regulations and guidance of those products subject to import prohibition include Ministry of Public Security, Ministry of Culture and Information, Ministry of Education and Training.

Question 28

In WT/ACC/VNM/9 reply 99, regarding restrictions on toxic chemicals, Viet Nam did not answer the following parts of the question: “Are such restrictions, in fact, only applied to

import, or do they apply to the same goods domestically produced? If not, such restrictions need to be uniform in application. Does Viet Nam have any domestic producers of these products?"

In addition to answering these questions, for purposes of transparency could Viet Nam please provide a list of all chemicals it considers toxic.

Answer:

Pursuant to the Government's Decree No. 11/1999/ND-CP dated 3 March 1999 on goods subject to prohibition on trading, commercial services subject to prohibition on providing; goods, services subject to trading restrictions, conditionally traded goods, services, certain highly toxic chemicals as indicated by Ministry of Science, Technology and Environment and Ministry of Industry are subject to prohibition on domestic trading. Some other toxic chemicals and products containing toxic chemicals as indicated by these two ministries are conditionally traded goods.

These restrictions are equally applied to Vietnamese and foreign traders. Vietnamese traders and foreign traders operating in Viet Nam are not allowed to trade in highly toxic chemicals subject to prohibition on trading. Regarding certain toxic chemicals and products containing toxic chemicals that are conditionally traded, traders can only conduct their business activities after having registered and obtained the Certificate of satisfying required trading conditions from the competent authority.

Certain highly toxic chemicals subject to prohibition on trading as indicated in the Decision No. 0088/2000/QD-BTM dated 18 January 2000 of the Minister of Trade to issue the Detailed List of goods subject to prohibition on trading, commercial services subject to prohibition on providing; goods, services subject to trading restrictions, conditionally traded goods, services are listed in Annex III of this document.

The toxic chemicals and products containing toxic chemicals that are conditionally traded as indicated in the Decision No. 0088/2000/QD-BTM are listed in Annex IV of this document.

Question 29

In WT/ACC/VNM/9 reply 100, Viet Nam states that importers of consumer items are "required to self balance their demand for foreign currency and [they are] not allowed to use deferred payment."

Such restrictions are violations of GATT Article XI and we seek their elimination prior to WTO accession.

Answer:

This restriction has been abolished.

Question 30

In reply to Question 86, Viet Nam informed the Working Party that starting from the year 2000 it began removing quotas. Could Viet Nam specify the restriction that have been eliminated so far.

Answer:

Viet Nam has abolished all export quotas, except export quotas on textiles and garments which have been agreed between Viet Nam and some other countries.

(f) Import licensing procedures

Question 31

Licensing procedures: We seek the submission by Viet Nam of a detail action plan for the introduction of licensing procedures that conform to the WTO rules.

Answer:

The Action Plan on the implementation of the WTO Agreement on Import Licensing Procedures will be submitted to the Working Party.

(h) Customs valuation

Question 32

Please specify a clear timetable for the elimination of minimum prices for the goods mentioned in answer to Question 119 of WT/ACC/VNM/9.

Answer:

In 2000, the List of commodity groups subject to State management for minimum customs value which previously included 15 groups has been cut down to 7. The current List will continue to be shortened towards the complete elimination as soon as Viet Nam fully implements the WTO Customs Valuation Agreement.

Question 33

In its answer to Question 76 (page 32), Viet Nam noted that “With respect to customs valuation, the current valuation system of Viet Nam will be changed gradually to be in conformity with the GATT Valuation Agreement in the coming years”. Can the Vietnamese authorities provide a more specific timetable for this process and a target date for full implementation to be achieved?

Answer:

Tentative timetable for the implementation of the WTO Customs Valuation Agreement is as follows:

- In 2001: Viet Nam will implement the Agreement on a pilot basis for goods imported from ASEAN countries under the ASEAN Common Effective Preferential Tariff (CEPT) Program;
- If the pilot implementation is found successful, in 2003 Viet Nam will make every endeavour to implement fully the Agreement for all imported goods.

Measures to implement the Agreement include:

- To formulate necessary legislation on the basis of the Agreement’s principles;
- To put into practice measures against commercial frauds, and transfer pricing;
- To train customs officers and business community;
- To establish the Working Group on Implementation of GATT/WTO Valuation Agreement pursuant to the Government’s decision in order to promote relevant activities (done already);

- To shorten gradually the list of imported items subject to minimum values for customs valuation purpose.

Question 34

In reply to Question 118 Viet Nam sketches the measures it will adopt and the timetable for their adoption in order to comply with the CVA. Could Viet Nam provide a more detailed action plan specifying each measure necessary for the implementation of the Agreement and the deadline for its implementation. In this action plan, we seek an early elimination of minimum customs values.

Answer:

Please refer to the answer to Question 33.

(j) Pre-shipment inspection

Question 35

By what date does Viet Nam foresee to have a legislation on preshipment inspection that will be consistent with the WTO Preshipment Agreement? Which steps have been taken so far?

Answer:

At the moment, Viet Nam does not use preshipment inspection measure. Therefore, Viet Nam does not foresee any legislation for the time being.

(k) Application of internal taxes on imports

Question 36

Concerning the application of internal taxes on imports (VAT and excise taxes), like other Members (see Questions 121, 124 and 129 of WT/ACC/VNM/9) we request that Viet Nam provide a comprehensive list that clearly shows each item taxed by the VAT on HS basis and the corresponding tax rate. We have the same request as regards the new Law on Excise Tax.

Answer:

As mentioned in the answer to Question 70 and 71 of the document WT/ACC/VNM/9, Viet Nam's HS system is now in progress to be in accordance with the nation's trade practices and international custom. Viet Nam has so far fundamentally implemented the HS Convention regarding the 6-digit commodity classification and is working towards the completion of HS 96 nomenclature-based commodity classification. In addition, Viet Nam is, together with other ASEAN countries, establishing the AHTN (ASEAN Harmonised Tariff Nomenclature) List. Therefore, the HS-based List of goods subject to Value-added Tax and Excise Tax will be provided after the completion of this process.

Question 37

In response to Question 125 of WT/ACC/VNM/9 Viet Nam stated that Value Added Tax (VAT) specifies goods categories subject to Excise tax which are not targeted by VAT at direct import and export stages. Is this provision equally applicable to domestically produced and to imported goods?

Answer:

Article 4 of Value Added Tax Law (Law No. 02/1997/QH9) states: “Goods, services that are subject to excise tax are not targeted by VAT at those stages which have been subject to excise tax”. This provision applies equally to imported and domestically produced goods.

Question 38

Viet Nam states in Question 122 of WT/ACC/VNM/9 that automobile manufacturers could receive a 95 per cent excise tax deduction during a transitional stage of up to 10 years from 1 January 1999, if so determined by the Government.

This preferential treatment for domestic producers is inconsistent with GATT Article III on national treatment and should be abolished prior to accession.

Answer:

Please refer to the answer to Question 122 of the document WT/ACC/VNM/9 again. The 95 per cent excise tax deduction applicable to domestic automobile assembling enterprises validates only until 31 December 2003. Within the 5 years afterwards, only in case that the enterprise suffers from loss, a deduction might be considered to be applied and specific rate of deduction is subject to the Government’s regulation.

Question 39

In Question 123 of WT/ACC/VNM/9 Viet Nam implies that excise tax rates between foreign and domestic sourcing for cigarettes, beer, and liquors are not harmonized despite the decreases in the rates on those products.

Viet Nam must ensure that the excise tax rates for both foreign and domestic produced goods are equal.

Answer:

Please refer to the answer to Question 39 of the document WT/ACC/VNM/6. Only cigarettes made from domestically produced materials and those made from imported materials are subject to different excise tax rates as specified in Viet Nam’s current Excise Tax Law. The Excise Tax Law does not provide for any tax rate discrimination between domestically produced and imported alcohol drinks and beer.

Question 40

The response to Question 124 of WT/ACC/VNM/9 states that Viet Nam is unable to provide HS 1996 codes for products under new Law on Excise Tax. The responses to Questions 121 and 129 indicate the same thing for VAT products and their tax rates, as Viet Nam is still implementing the HS Convention. A list of products subject to the VAT and Excise Tax and the rates applied using Viet Nam’s current coding system would still be helpful to us, and we believe it could be helpful to Viet Nam as well, as it prepares its conversion.

We request that Viet Nam provide such a list using current product codes.

Answer:

Please refer to the answer to Question 36.

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

Question 41

Viet Nam does not currently have a regulation covering these subjects and their elaboration, according to reply to Question 134, may be completed after accession. Is Viet Nam ready to undertake that in the absence of WTO compatible rules on antidumping and countervailing regimes, it will not impose similar remedies to foreign goods?

Answer:

Viet Nam reserves the right to apply WTO-consistent anti-trade distortion measures and trade remedies to dumped or subsidized imports causing or threatening to cause injury to its domestic production of the like products in order to protect the legitimate interests of the Vietnamese producers. In the absence of anti-dumping and countervailing regulations, Viet Nam will endeavour to apply the WTO relevant provisions when using these trade remedies and measures.

2. Export Regulation

(c) Quantitative export restrictions

Question 42

In reply to Questions 138 and 139 of WT/ACC/VNM/9, Viet Nam states that it has no intention of giving its export quota system on rice. This system is GATT Article XI inconsistent, and we urge Viet Nam to eliminate it prior to accession.

Answer:

Viet Nam's export quota on rice has been abolished.

(f) Export financing, subsidy and promotion policies

Question 43

Concerning the Export Reward Program (set up under Decision No. 764/QD-TTg dated 24 August 1998) described in WT/ACC/VNM/13, 27 June 2000.

How many firms are currently participating in the program and receiving support the Fund? What has been the level of support conferred on firms to date?

This program would appear to be a prohibited subsidy within the meaning of Article 3 of the WTO Agreement on Subsidies and Countervailing Measures. We would appreciate information from Viet Nam on its intention to end the program in the context of its accession to the WTO

Answer:

The Export Reward Fund set up under the Decision No. 764/1998/QD-TTg dated 24 August 1998 has now been superseded by the Export Promotion Fund which is established under the Decision No. 195/1999/QD-TTg of the Prime Minister of 27 September 1999. Details of the

Export Promotion Fund will be provided in full Notification pursuant to Article XVI:1 of the GATT 1994 and Article 25 of the Agreement on Subsidies and Countervailing measures that covers the period of 1999-2000.

In 1998, 85 enterprises were rewarded with total 4,685 million VND (approximately US\$323,103).

In 1999, 148 enterprises were rewarded with total of more than 6.2 billion VND (approximately US\$427,586).

Candidates for export rewards include both Vietnamese and foreign-invested enterprises.

The above-mentioned export rewards were in fact only of spiritual value to encourage enterprises to fulfil their export activities well. At the currently prevailing exchange rate, the sum that each eligible enterprise received on average was only around US\$3,800 and US\$2,900 in 1998 and 1999 respectively.

Question 44

Support for enterprises with foreign owned capital which produce goods for export: We note that these would be considered export subsidies, which are prohibited for developed countries but allowable for developing countries. Could Viet Nam indicate how and when these subsidies would be phased out.

Answer:

Support for enterprises with foreign owned capital which produce goods for export is an investment incentive under the Law on Foreign Investment in Viet Nam.

The above mentioned measures is probably not inconsistent with the Agreement on Subsidies and Countervailing measures. Otherwise, Viet Nam shall consider to adjust these measures in accordance with the transitional period provisions granted to developing countries with per GNP capita of less than US\$1,000.

Question 45

Support for domestic enterprises which produce goods for export: We note these are export subsidies and are contingent on domestic over imported goods both of which are prohibited for developed countries and which must be phased out by developing countries by 2003 and 2000 respectively. Could Viet Nam indicate how and when these export subsidies will be phased out? Could she also provide details of the value of the subsidies or data on their possible trade effects?

Answer:

Support for domestic enterprises which produce goods for export is an investment incentive under the Law on Promotion of Domestic Investment with the view to attracting and promoting investment in exports-producing sectors. The consistency of these investment incentives with the WTO Agreement on Subsidies and Countervailing measures and Agreement on Trade-related investment measures is being studied and the response will be provided as soon as possible.

3. Internal policy affecting foreign trade in goods

(a) Industrial policy, including subsidy policies

Question 46

In your answer to Question 144 (WT/ACC/VNM/9, page 57) concerning different industrial subsidies, the Export Promotion Fund under the Prime Minister's issued Decision 195/1999 is mentioned. Is this program listed in the notification on industrial subsidies (WT/ACC/VNM/13)? Could you please provide more information on this scheme, such as policy objective of this program, authority of the subsidy, form of the subsidy, beneficiaries, total amount budgeted, duration and trade effects.

Answer:

The Notification of Industrial Subsidies of Viet Nam (document WT/ACC/VNM/13) only includes subsidy programs during the period of 1996-1998. Therefore, the Export Promotion Fund issued pursuant to the Prime Minister's Decision No. 195/1999/QD-Ttg dated 27 September 1999 has not been referred to in this document. Detailed information of the Export Promotion Fund will be provided in full Notification pursuant to Article XVI:1 of the GATT 1994 and Article 25 of the Agreement on Subsidies and Countervailing measures for the period of 1999-2000.

Question 47

Viet Nam's Notification on Industrial Subsidies (WT/ACC/VNM/13): Structure for certain enterprises to restructure: It is unclear whether this would be considered a specific subsidy and therefore open to challenge in the WTO. If the criteria for awarding it are based on the number of employees or the size of the enterprise then it would be considered non-specific and therefore allowed under the Subsidies Agreement. Could the Vietnamese authorities provide clarification as to the criteria for granting support for enterprises to restructure?

The subsidies have a duration of between 1996 to 1998, yet some of the loans are for 7-10 or 15 year periods. Could Viet Nam provide details of when the loans were given and when they will be fully repaid?

Answer:

The support recipients are all socio-economically important enterprises employing a large number of employees which are facing serious difficulties in their business. The objective of the adjustment support programs is to secure employment and maintain production stability and social security.

In Viet Nam's view, these support programs are not inconsistent with the WTO Agreement on Subsidies and Countervailing measures as the fundamental criteria governing their eligibility are number of employees and size of enterprise.

Due to the deficiency in our statistical system, it is impossible for us to gather more detailed information than that provided in the document WT/ACC/VNM/13.

Question 48

Support for domestic enterprises which operate in certain business fields and sectors: These are specific subsidies which are open to challenge in the WTO. Details of duration and value are not

provided so the likelihood of challenge in WTO cannot be assessed. Also if they have assessed that the trade effect is insignificant they should be able to provide statistical data. Could Viet Nam provide details of the duration and value of these specific subsidies, and provide statistical data to demonstrate how the trade effect is insignificant?

Answer:

Support for domestic enterprises which operate in certain business fields and sectors is an investment incentive for socio-economic development orientation with a view of employment creation and hunger eradication and poverty elimination for people living in remote regions. Pursuant to the Decree No. 07/1998/ND-CP dated 15 January 1998 providing detailed regulations on the Law on Promotion of Domestic Investment dated 22 June 1994 (amended), investment incentives for investment projects started from the date this Decree became effective (i.e. 1 February 1998) shall be subject to the provisions of this Decree. For the specific incentives, this Decree provides for detailed regulations on the starting date for those incentives applicable to the specific investment projects. For instance, production, transport, trade and service establishments investing in those business fields and sectors as prescribed in the List of business fields and sectors eligible for investment preferential treatment such as afforestation, public transportation, education and training development, healthcare, deep-sea fishing, processing of agricultural, forest and aquatic products, traditional handicrafts, etc. shall be entitled to a 50 per cent reduction of the turnover tax payable for 1 year from the month the taxable turnover is made; be exempt from profits tax for the first 2 years from the profit-making date and entitled to a 50 per cent reduction of the profits tax payable for the subsequent 3 years.

Due to the deficiency in our statistical system, it is impossible for us to gather such detailed information about the value of the program as requested.

Question 49

Support for enterprises with foreign owned capital which operate in certain business fields and sectors: We note these are specific subsidies which are open to challenge within the WTO. They are also possible contingent on the use of domestic over imported goods and therefore should be phased out. We request details on how and when Viet Nam intends to phase out these specific subsidies, and data on trade effects, value, duration of these subsidies.

Answer:

Support for enterprises with foreign owned capital which operate in certain business fields and sectors is an investment incentive with a view to encouraging foreign investment for full and effective exploitation and utilisation of domestic resources (such as natural resources, human resources), but not for promotion of import-substitute production.

Due to the deficiency in our statistical system, it is impossible for us to provide such detailed information as requested.

Question 50

Support for domestic enterprises which operate in certain areas: We note that these are specific subsidies which could be challenged in WTO. Until 1999 they are likely to have been considered as non-actionable regional subsidies. However the provisions which allowed non-actionable subsidies lapsed on 31 December 1999. A number of other Members including the EU have regional aid programmes so it is less likely that these would be challenged. Once again, could Viet Nam provide data on the value or duration of the subsidies? If an assessment on the trade effect has been made Viet Nam should be able to provide statistical data to back it up.

Answer:

Support for domestic enterprises which operate in certain areas is aimed to encourage various domestic economic sectors to invest in production and trade in mountainous, remote areas and other areas under harsh socio-economic conditions with a view to stimulating the socio-economic development therein. This program's objective is to narrow the economic disparity and to bridge the development gap between regions within the country. Therefore, regional development support under the form of investment incentives is, in our view, a legitimate need of such a low income developing country in the process of economic transition as Viet Nam.

Due to the deficiency in our statistical system, it is impossible for us to provide such detailed information as requested.

However, due to the disadvantaged location, underdeveloped infrastructure, limited market access opportunity, unavailability of skilled labour, transportation difficulty, etc. the number of investment projects in those areas has so far been rather small. Hence, the number of eligible recipients of the mentioned investment incentives is still limited.

Question 51

Support for enterprises with foreign owned capital which operate in certain areas: Similarly these are specific subsidies which are open to challenge in WTO and would have been considered a non-actionable regional subsidy until December 1999. Again, we request further details on value and duration and trade effects.

Answer:

Please refer to the answer to Question 50.

Question 52

Preferential credit for electrical material enterprises: Could Viet Nam clarify whether preferential credit is an interest free loan or reduced interest loan and over what term? Although preferential credit could be challenged as a specific subsidy it would appear to have little trade effect and it is therefore less likely to be challenged.

Answer:

In this program, preferential credit is a low interest loan. The support program's objective is to improve production capacity to serve for the development of national electricity network and the electrification in rural, mountainous and ethnic minority areas as well as offshore islands.

Question 53

Support for production units facing difficulties for newly set up or expanded production units, for production units applying new production technology: These appear to be non-specific subsidies in that they are available to any enterprise damage by natural calamities, war or unexpected contingencies and would therefore not be open to challenge. Once again we seek data on value and duration and trade effects.

Answer:

Support for production units facing difficulties for newly set up or expanded production units, for production units applying new production technology is broadly applied. Hence, it is not a specific subsidy. Due to the deficiency in our statistical system, it is impossible to provide such detailed information as required.

(b) Technical regulations and standards

Question 54

With reference to Question 152 (page 58), can Viet Nam give a more precise indication of when their TBT Action Plan will be submitted to the Working Party?

Answer:

Viet Nam will submit the Action Plan for the implementation of the TBT Agreement to the Working Party as soon as possible.

Question 55

We seek the submission by Viet Nam of a detailed action plan for the implementation of the TBT Agreement by the time of accession. Could Viet Nam specify at what stage is the process of establishing the TBT enquiry point?

Answer:

At present, the TBT focal enquiry point is Directorate for Standards and Quality (STAMEQ).

Concerning the Action Plan for the implementation of TBT Agreement, please refer to the answer to Question 54.

Question 56

Does Viet Nam have concrete projects for further harmonisation of its standards with international standards? If so, can it provide relevant information? If not, would it be ready to prepare an action plan in this respect?

Answer:

Viet Nam has programs to harmonize its national standards with international standards.

These annually-designed harmonisation programs are based on the nation's economic development and international economic integration needs.

At present, there are nearly 5,000 national standards in Viet Nam, of which approximately 1,000 standards in various fields are international standards adopted and translated for application in Viet Nam.

Question 57

Viet Nam indicated in earlier information to the Working Party that standards can be made compulsory for ensuring the health and safety of humans, animals and plants, for protecting the environment or for "goods that are significantly important to the economy". The last provision

does not appear to be in line with the provisions or Article 2.2 of the TBT Agreement. Would Viet Nam be ready to reconsider this approach? In addition, what does Viet Nam mean by stating that standards can be made compulsory “for harmonising of standards”?

Answer:

The Ordinance No. 18/1999/PL-UBTVQH10 dated 24 December 1999 of the National Assembly Standing Committee on goods quality, which took effect as from 1 July 2000, has superseded the Ordinance on goods quality dated 27 December 1990.

The new Ordinance provided that goods related to food, safety, sanitary, human health, environment, and other goods specified by laws and regulations are obliged to be in conformity with Viet Nam’s national standards. Other goods specified by laws and regulations are understood as:

- Goods related to national security;
- For preventing commercial frauds and deceptive practices.

This is in accordance with the spirit of WTO TBT Agreement.

Question 58

In earlier answers to questions asked by Members on the conformity assessment procedures applicable to locally-produced goods for domestic consumption, Viet Nam sometimes refers to “registration of product quality”, and sometimes to “mandatory conformity certification”. Can Viet Nam confirm that these two wordings actually correspond to one single procedure?

Answer:

The registration of goods quality and the mandatory conformity certification are the two different methods.

However, pursuant to the Ordinance on Goods Quality No. 18/1999/PL-UBTVQH10 dated 24 December 1999, the former (registration of goods quality) has already been annulled.

Question 59

Viet Nam has also indicated that different conformity assessment procedures apply to locally produced goods for domestic consumption on the one hand (“registration of products quality”) and to imported and exported goods on the other hand (“State inspection on quality”). We understand that there is no possibility of choice between the two procedures. Is Viet Nam planning to move towards a single procedure applying to products irrespective of their geographic origin or destination?

Answer:

The Ordinance on Goods Quality No. 18/1999/PL-UBTVQH10 dated 24 December 1999 specifies the following two methods:

- Quality certification;
- Quality inspection.

These two methods are mainly developed on the basis of ISO Guides. Imported products are subject to either one of these two methods.

Question 60

Can Viet Nam provide details of the various steps that have to be taken by manufacturers/importers and of the various tests and controls that are carried out as part of these two procedures?

Answer:

The mandatory product quality certification in Viet Nam is now being changed to safety certification. The safety certification method is developed on the basis of Systems 4 of the 8 third-party certification systems introduced by ISO.

The safety certification method includes representative sample testing + market/factory surveillance.

The main stages of the safety certification method consists of :

- Application for certification;
- Representative sample testing (if necessary);
- Verification and granting certificate;
- Follow-up surveillance (i.e. post-certification surveillance).

Question 61

How are the fees that have to be paid by manufacturers/importers calculated in each of these two procedures? How does Viet Nam ensure that such fees are proportional to the work carried out?

Answer:

Fees that manufacturers/importers have to pay are calculated on the basis of the costs of services rendered in the following main work:

- testing;
- verification;
- administrative formalities.

Fee rates are specified by the competent authority (Ministry of Finance).

Question 62

Viet Nam has indicated that it has introduced a procedure of manufacturer's declaration of conformity, so far on a limited basis. Is there a list of products for which this procedure can replace mandatory third party certification? Is our understanding correct that this procedure is so far reserved for domestically produced goods? Is Viet Nam planning to expand the scope of this procedure in the near future, notably to cover imported goods? Is it ready to publish a list of transparent criteria to be fulfilled by companies wishing to use this procedure? Can it also indicate which authority is responsible for authorizing the use of this procedure?

Answer:

The manufacturer's declaration of product conformity to standards and technical regulations shall be the principal method of quality management in Viet Nam in the coming time.

Imported products are also subject to this method.

The agency in charge of State management of goods quality is the Directorate for Standards and Quality (STAMEQ).

Question 63

Does the list of products that are subject to mandatory quality inspection contain the same products as the list of products that are subject to mandatory registration of product quality? Can Viet Nam provide the latest version of both lists?

Answer:

The method and list of goods quality registration expired at the beginning of 2001.

Regarding the list of imported and exported goods subject to State mandatory product quality inspection, please refer to the following website: <http://www.tcvn.gov.vn>.

Question 64

Viet Nam indicated in earlier answers to questions from Members that it was considering simplifying its inspection procedures by moving towards a system of representative sample inspection. Can Viet Nam report on progress in this discretion?

Answer:

The method of representative sample testing has already been implemented in imported-exported goods inspection by the State inspection bodies in Viet Nam.

Question 65

Viet Nam has also indicated that the requirement for inspection of each individual consignment can be waived in some cases, notably for companies that have a certain track record of quality. Is there a list of transparent criteria that need to be fulfilled by companies which would wish to avail themselves of this simplified procedure? If so, can Viet Nam provide the relevant legal texts? Which authority is competent for allowing the use of this procedure?

Answer:

The reduced inspection procedure applicable to imported and exported goods is provided for in the Decision No. 1091/1999/QĐ-BKHCNMT dated 22 June 1999 of the Minister of Science, Technology and Environment on issuance of Regulation on State quality inspection of imported and exported goods. Pursuant to this Regulation, consignments of which the tracking record of quality has sustainably satisfied relevant quality grades prescribed in inspection criteria (using statistical result of quality inspection of imported and exported consignments in the history) are eligible for the reduced procedure.

Conditions for application and detailed implementation of the reduced inspection procedure are specified in regulations or inspection process applicable to each kind of goods issued by the Directorate for Standards and Quality and line management ministries on the following principles:

- Reduction of inspection frequency (quantity of consignments continuously to be inspected by way of taking samples);

- Reduction of quantity of samples to be taken for inspection;
- Reduction of inspection criteria;

The State quality inspection bodies are competent for allowing the use of this procedure.

Question 66

Can Viet Nam provide information on the procedures available for reviewing complaints against decisions by the authorities responsible for conformity assessment/quality inspection procedures?

Answer:

The procedure of reviewing complaints against decisions by the authorities responsible for conformity assessment is conducted in compliance with Viet Nam's Ordinance on Claim and Denouncement.

Question 67

Does Viet Nam confirm that it will apply the TBT Agreement in full by the time of accession? Is it planning to set up one single TBT enquiry point, which would probably be the most user-friendly solution?

Answer:

Please refer to the answer to Question 55.

The establishment of a TBT focal enquiry point will be duly considered, however, it requires time and technical solutions to handle this issue.

Question 68

Can Viet Nam provide information on its recent agreement with Ukraine on matters covered by the TBT Agreement? Does it include a mechanism for mutual recognition of conformity assessments?

Answer:

The Agreement between Viet Nam and Ukraine includes the following main context:

- Harmonisation of national standards and conformity assessment procedures with international standardisation organisations' standards and guides;
- A mechanism for mutual recognition of conformity assessment results;
- Mutual technical cooperation.

Question 69

Can Viet Nam provide the texts of its existing Mutual Recognition Agreements? Can it also provide detailed information on the work underway in the framework of ASEM with a view to the conclusion of MRAs, and in particular on the so-called framework agreement?

Answer:

Regarding texts of Viet Nam's existing MRAs, please refer to the following website: <http://www.tcvn.gov.vn>.

ASEM is considering the need and capability of concluding the Framework MRA. The effective implementation of MRAs under other regional cooperation frameworks or among groups of ASEM economies will be a prerequisite for this process.

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

Question 70

Viet Nam seems to be taking appropriate account of international standards, guidelines and recommendations. We would welcome a statement of commitment from Viet Nam to implement the SPS Agreement from the date of accession without recourse to any transition period.

Answer:

Viet Nam is now taking appropriate accounts of international standards, guidelines and recommendations in this field but requires certain transitional period after WTO full membership in order to make necessary amendments and supplements so as to bring its relevant regulations into line with the SPS Agreement. Being a developing country with low level of development and in the process of economic transition, Viet Nam faces a lot of difficulties in implementing such a complicated agreement which requires a lot of preparatory work regarding legislation, personnel capacity and technical conditions.

Question 71

Overall, the paper focuses predominantly on inspection but we note that SPS measures are broader than this. We would welcome additional information from Viet Nam on other aspects of implementation of the SPS Agreement, such as the development of relevant legislation and administrative systems.

Answer:

Viet Nam is now making amendment to Plant Protection and Quarantine and Veterinary Ordinances, Decrees and regulations regarding inspection, quarantine matters and other control measures. These amendments will be informed to the Working Party members as soon as they are fully completed.

Question 72

On transparency (Box 2) the statement that "Viet Nam ensures that transparency obligations are met on the ongoing basis" would appear to be inconsistent with the admission that a notification authority and national enquiry point have not been established. What steps is Viet Nam taking to establish a national enquiry point? What is the timetable for implementation of this requirement?

Answer:

Department of Plant Protection and Veterinary Department, which are in charge of plant protection and veterinary matters respectively, are now under the management of Ministry of

Agriculture and Rural Development. These two agencies are, therefore, national enquiry points responsible for providing information on plant protection and veterinary when necessary.

Question 73

We suggest that a stated commitment to publication of regulations, as required pursuant to Article 7 and Annex B (paragraphs 1-2) of the SPS agreement, be included in the checklist.

Answer:

Plant Protection and Quarantine Ordinance, Veterinary Ordinance and other relevant legislation are now being modified. Viet Nam will notify these modifications to the Working Party members as soon as they are approved.

Question 74

There seem to be no need to repeat in Boxes 3 to 10 that Viet Nam shall fully inform changes to WTO members. This is a transparency obligation and could therefore be included in Box 2.

Answer:

The comment is agreeable.

Question 75

On necessity (Box 3) we believe the first sentence should stop after the second reference to “Viet Nam”. The remaining wording as it currently stands is confusing.

Answer:

The comment is agreeable. The first sentence should stop after the second reference to “Viet Nam” and the remaining wording will be deleted.

Question 76

With regard to science based regulations (Box 4), we would like to know why only three articles are considered to relate to “regulation based on science”. How does GMO labeling relate to such regulations?

Answer:

Regarding science-based regulations (Box 4), our reference to three relevant articles of the SPS Agreement does not mean that only these three articles are considered to be related to science-based regulations.

Concerning the GMO labelling: this is a relatively new field for Viet Nam. At present, the Regulation on safety management for genetically modified organism and products thereof is being drafted. According to the Action plan for the implementation of SPS Agreement (document WT/ACC/VNM/11), for genetically modified organism (GMO) products, Viet Nam should formulate compulsory standards on products using GMO technology on the basis of specific evidence or the appearance of the GMO labeling as “products using GMO technology”. According to the Decision No. 178/1999/QĐ-TTg of the Prime Minister dated 30 August 1999 on issuing Regulation on goods labelling for domestic circulation and for exports, imports, which took effect as from 1 January 2001,

ingredient (composition) constitutes one of the eight mandatory content factors of goods label. The detailed provisions on ingredient (composition) specify that components or elements of the compound component which fall into the special group including radiated, GMO technology used ones are obliged to be presented on goods label in compliance with international regulations that Viet Nam has accepted to apply.

Question 77

Harmonization (Box 5): We would appreciate further information on the harmonization of plant inspection procedures in ASEAN. For example, what is meant by the reference to “the first ten kinds of agricultural produce”? The obligation of members is to harmonize their procedures with international standards, guidelines and recommendations formulated by Codex, OIE and under the IPPC, insofar as they are relevant to the subject areas covered by the SPS Agreement. There is no obligation to harmonize with the measures of other members of the WTO or regional organizations.

Answer:

Viet Nam and other ASEAN members are now developing a harmonisation framework of plant inspection procedures for the first 10 agricultural products. This harmonisation is applied to the ASEAN members only.

Question 78

Risk assessment (Box 7): How is risk assessment applied at the “local grassroots”?

Answer:

At present, risk assessment is undertaken only at the Central level. Local bodies only coordinate and provide necessary information to the Central competent authority for implementation.

Question 79

Could Viet Nam update the Working Party on the measures that have been taken to implement the SPS Agreement according to the action plan submitted in June 2000.

Answer:

1. Plant protection and quarantine activities:

Draft of amendments and supplements to Plant Protection and Quarantine Ordinance has been completed and is now submitting to the Standing Committee of National Assembly for approval.

2. Veterinary activities under the EU-funded project:

- With assistance from EU experts, Viet Nam is now drafting amendments to Veterinary Ordinance and other relevant subsidiary legislation;
- An information unit of Viet Nam’s Veterinary authority has already been set up and is being further developed;
- Recommendations to improve the inspection process of veterinary hygiene and food safety and sanitary for products of animal origin are in preparation;

- Recommendations to improve the inspection process of veterinary medicines and vaccines are in preparation;
- Recommendations to improve technical skills, knowledge and professional qualities of Vietnamese veterinary officers are in preparation.

(d) Trade-related investment measures

Question 80

The provision of Article 61 of the Investment Law in Viet Nam, whereas “any change to business objective of an enterprise must be approved by competent authority”, may induce an excessive hindrance to the development of foreign business engaged in importing of goods. Does the Government of Viet Nam envisage changes in the above mentioned law which would leave more ample space for a positive expansion of foreign enterprises registered in Viet Nam? (WT/ACC/VNM/9, p.27, Question 58)

Answer:

Pursuant to Article 61 of the Law on Foreign Investment in Viet Nam dated 12 November 1996, any changes to the business objectives, the scale of production of enterprises with foreign owned capital must be approved by the competent body in charge of State management of foreign investment. This provision is a result of Articles 59 and 60 of the Law on Foreign Investment in Viet Nam, according to which the approval decision of foreign investment projects in Viet Nam must be in the form of an investment licence. The business objective and production scale of an enterprises with foreign owned capital are two of the items specified in its investment licence. Therefore, an enterprise with foreign owned capital must apply for amendment of its investment licence (amended Investment Licence) in case of any change to its business objective. The provisions of Article 61 of the Law on Foreign Investment does not cause any hindrance to enterprises' import activities. Viet Nam's foreign investment legislation does not restrict the importation of enterprises with foreign owned capital of equipment, machinery, materials for the purpose of enterprise establishment and production.

Question 81

In order to protect foreign direct investment it might be helpful the right to use land, including industrial parks, should be permitted for transfer on a voluntary basis without undergoing official control. In your response to a similar question, you have stated that the land remains subject to public ownership and under the administration of the State. You have also hinted at a number of regulations to facilitate land users in transferring and mortgaging their land use right. It seems, however, that the official registration land property rights is not yet established (WT/ACC/VNM/9, page 67, Questions 171 and 172). Could you please elaborate which steps will be taken in order to ensure a fair, transparent and predictable treatment of foreign investment when necessitating the use of land?

Answer:

According to the Constitution of Viet Nam and Viet Nam's legislation on land, land is of public ownership, and is subject to exclusive administration by the State. Pursuant to Law on Land dated 14 July 1993, the Law on amendments and supplements to a number of Articles of the Law on Land dated 2 December 1998 and the Ordinance on rights and obligations of foreign organizations, individuals leasing land in Viet Nam dated 14 October 1994, the Government of Viet Nam shall lease land to foreign-invested enterprises in Viet Nam who have the demand for using land to implement their investment projects (excluding joint ventures between foreign investors with Vietnamese party

who contributes capital in the form of land use rights). Also according to the Law on Land, all entities which lease land are obliged to use leased land in due compliance with the purpose specified in the land lease contract signed with the Department of Land administration and not allowed to transfer their land use rights. However, in case that enterprises lease land for industrial zone infrastructure construction, they are allowed to lease out the land where the infrastructure has been built.

According to the Law on amendments and supplements of a number of Articles of Foreign Investment Law dated 9 June 2000, foreign-invested enterprises are allowed to mortgage their land assets and value of their land use rights to borrow loans from credit organisations operating in Viet Nam. At the moment, Viet Nam's competent authorities are drafting subsidiary regulations on mortgaging the value of land use rights. Article 92 of the Decree No. 24/2000/ND-CP dated 31 July 2000 providing in details the implementation of the Law on Foreign Investment in Viet Nam has provisions to guide the mortgaging of the value of land use rights and land assets.

According to the Decree No. 08/2000/ND-CP of the Government on registration of security transaction, the mortgaging of the value of land use rights and land assets must be registered at the Department of Land Administration or Department of Housing-Land Administration. The disposal of mortgaged assets will comply with relevant regulations on security transactions.

Question 82

We appreciate the clarification provided by Viet Nam in this section, concerning their trade-related investment practices, especially on the liberalization of local content requirements.

We note that Viet Nam should bring all of its investment measures into line with the WTO Agreement prior to the date of accession.

Answer:

The Government of Viet Nam has introduced a number of measures to encourage foreign investment for the past years. Modifications of investment measures to bring them into line with the WTO provisions prior to the date of accession will be taken into consideration for specific issues and fields

Question 83

Please submit to the Working Party a detail action plan identifying the current measures inconsistent with the TRIMS Agreement and specifying the timetable for their elimination. Such an action plan should make sure that all TRIMS inconsistent measures are eliminated latest at the moment of accession of Viet Nam to the WTO.

Answer:

Viet Nam's legislation of foreign investment includes some measures inconsistent with TRIMs Agreement, for example local content requirements for automobiles and motorcycles manufacturing projects.

Detailed Action Plan to gradually bring these measures into line with the TRIMs Agreement, taking into account flexibility, special and differential treatment for developing countries, is in progress and shall be submitted to the Working Party as soon as it is completed.

(e) **State-trading practices**

Question 84

Viet Nam has circulated a Notification on State Trading Enterprises and submitted it to the Working Party for review in WT/ACC/VNM/14. We appreciate Viet Nam's notification of its state trading enterprises (STEs). We would like to commend Viet Nam in particular for its comprehensive and detailed description of the activities and operation of Vinafood II. However, we understand that there are several other STEs which are directly engaged in rice trade in Viet Nam. In this regard, would Viet Nam please submit additional notifications on the following state trading enterprises: Vinafood I, Gedosico Import-Export, Grain Import-Export, and Saigon General Trading Corp?

Answer:

The system of designating authorized enterprises to export rice was already phased out. Please refer to the answer to Question 42.

Question 85

We have a broader concern about the ability of export state trading enterprises (STEs) to use their special rights and privileges to disguise export subsidies or to otherwise engage in anti-competitive behaviour. In this regard, will Viet Nam provide details on the specific steps it is willing to take to ensure that the operations and policies of STEs within its jurisdiction do not distort trade, and are otherwise consistent with the principles of nondiscriminatory treatment prescribed by Article XVII of the GATT.

Answer:

Viet Nam is in the process of reforming State trading enterprises so as to create a level playing field for all enterprises and ensure that enterprises' activities are in accordance with commercial considerations.

Competition and anti-trust Law is being drafted to prevent and punish anti-competition activities (scheduled to be submitted to the National Assembly for approval in 2002).

Question 86

GATT Article XVII stipulates that purchases and sales by state trading enterprises (STEs) must be based "solely in accordance with commercial considerations". However, the information provided in WT/ACC/VNM/14 suggest that the STEs notified by Viet Nam do not operate strictly on the basis of commercial concerns.

For example, it reports that decisions on import quantities for fertilizers by the Agricultural Materials Corporation (VUGECAM) are based on "quota allocations annually" and decisions on the prices for imported fertilizer are set by the Government Pricing Committee.

Another example can be found in the restrictive import licensing procedures applied by the Ministry of Culture for importing printing equipment, printed material, and cinematographic works, which suggest that commercial concerns are not the sole criteria for purchases.

Answer:

The system of fertilizer import quotas and designating authorized enterprises to import fertiliser was already phased out.

Import licensing procedures under the management of the Ministry of Culture and Information applied for specialised printing plates and typesetting system for printing industry, some types of printer are aimed to ensure national security, social stability. Concerning motion pictures and other audio-visual products, recorded on all kinds of materials, Ministry of Culture and Information only examines their content for the purpose of ensuring national security, social security and preserving national culture, traditions and customs from negative effects and does not grant import licences. Purchases and sales made by state trading enterprises in this field are based only on commercial considerations.

Question 87

We note with concern that according to WT/ACC/VNM/9, Annex I, many of the products subject to state trading are also subject to numerous additional restrictions. For example gasoline and fertilizer are subject to state trading restrictions as well as quantitative restrictions, surcharges and import licensing. Spirits are subject to state trading and quantitative restrictions.

Answer:

Viet Nam's import management policy has been relaxed for the past few years. For the remaining restrictions, Viet Nam shall submit the Elimination schedule of non-tariff barriers in the process of WTO accession negotiations together with Initial Offer on Goods.

Question 88

It also appears that some of the state trading enterprises identified in WT/ACC/VNM/14 are involved in both trade and industry regulation. For example, PetroVietNam is both an end-user and the industry regulator in the energy industry. Separation of these functions would assist Viet Nam in developing a more open and transparent regulatory and purchasing environment.

Answer:

Pursuant to the Notification on state trading enterprises of Viet Nam (document WT/ACC/VNM/14), PetroVietnam is granted exclusive right to explore and exploit oil and gas over the whole territory, territorial waters, economic special privileged zones, continental shelf and offshore islands under the sovereignty of Viet Nam and eligible for operating petroleum-relating activities overseas upon the approval of the Government. Therefore, PetroVietnam is just an enterprise implementing tasked assigned by the Government, but not an industry regulator. The Government of Viet Nam is responsible for issuing and coordinating macro-policies of gas and oil industry and governing the industry.

Question 89

We note, in addition, that several items listed as being subject to state trading in WT/ACC/VNM/9, Annex I are not addressed in WT/ACC/VNM/14. These items include clinker black cement and constructions glass. We would appreciate information from Viet Nam addressing this, and to revise WT/ACC/VNM/14 to reflect the state trading requirements on these items.

Answer:

Viet Nam will continue to update and supplement information relating to state trading enterprises in its new Notification on state trading enterprise for the period of 1999-2001.

Question 90

We have a commercial interest in many of the sectors listed in the STE notification in WT/ACC/VNM/14. In general, we seek to minimize obstacles to trade created by the current state regime, and we hope that Viet Nam will be willing to work with us to deal with any such obstacles identified.

Answer:

State trading enterprises in Viet Nam are all operating in accordance with commercial considerations. However, we are willing to work with the Working Party members to settle concerns with respect to state trading enterprises.

(l) Government procurement practices

Question 91

In the response to Question 192 in WT/ACC/VNM/9, concerning when a list of governmental procuring entities will be available, Viet Nam cites the Decree of 1 September 1999 on Tendering Regulations.

Does this regulatory document also include the list of government procurement agencies and entities? If not, will such a list be published and made available for both domestic and foreign suppliers?

Answer:

The Regulation on Tendering issued together with the Government Decree No. 88/1999/ND-CP dated 1 September 1999 and supplemented and amended by the Decree No. 14/2000/ND-CP dated 5 May 2000 does not include the list of government procurement agencies and entities. However, according to this Regulation, any purchase of goods and services or any investment by State agencies, mass organisations and State-owned enterprises from the sources of the State budget must be made in the form of a tender.

Question 92

Concerning the response to Question 193 in WT/ACC/VNM/9: In instances where a tender is not open to foreign bidders, are the rules for publishing tenders and public notification the same as those that are open?

Answer:

Pursuant to the Regulation on Tendering issued together with the Government Decree No. 88/1999/ND-CP dated 1 September 1999 and supplemented and amended by the Decree No. 14/2000/ND-CP dated 5 May 2000, the notification of bid invitation and bid result must be made public.

Question 93

Concerning the response to Question 1 in WT/ACC/VNM/7: Does the more recent tendering regulation (1 September 1999) provide for the option of a foreign bidder to not enter in to partnerships with Vietnamese contractors or is it required in every instance that such a partnership be formed?

Regarding the procurement of “suitable materials” do the technical requirements include issues concerning “safety” in addition to sanitary and environmental issues?

Answer:

Pursuant to the Regulation on Tendering issued together with the Government Decree No. 88/1999/ND-CP dated 1 September 1999 and supplemented and amended by the Decree No. 14/2000/ND-CP dated 5 May 2000, the only case where foreign contractors are obliged to enter into partnership with Vietnamese contractors or to undertake to employ Vietnamese sub-contractors is international tenders for construction and installation in Viet Nam.

Regarding the requirement that bidders attending tenders in Viet Nam undertake to purchase and use materials and equipment of suitable quality and at reasonable price which are currently produced, processed or available in Viet Nam, in addition to the quality suitability, price reasonability and environmental sanitary, contractors are also required to ensure “safety” and some other necessary issues.

Question 94

Concerning the response to Questions 2 in WT/ACC/VNM/7: Regarding the public notices provided in government tendering, particularly the results of the tender, is there a central publication or federal journal where these notices are provided?

In light of the restrictions placed on foreign suppliers, what other steps has Viet Nam taken to make the bidding process in Government Procurement more transparent?

Answer:

The public notices of government procurement in Viet Nam are compulsory. Viet Nam’s legislation has presently not specified any particular publication where these notices are obliged to be provided. Consequently, these public notices can be made through either Central or local newspapers.

Regarding restrictions on foreign contractors, the Decree No. 88/1999/ND-CP dated 1 September 1999 of the Government on issuing of the Regulation on Tendering previously require that foreign contractors enter into partnership with Vietnamese contractors or undertake to employ Vietnamese sub-contractors when participating in tenders for the selection of consultants, tenders for the purchase of goods, and tenders for construction and installation in Viet Nam. However, pursuant to the Decree No. 14/2000/ND-CP dated 5 May 2000 of the Government on amendments and supplements to a number of Articles of the Regulation on Tendering issued together with the Government Decree No. 88/1999/ND-CP dated 1 September 1999 the only case where foreign contractors are presently obliged to enter into partnership with Vietnamese contractors or to undertake to employ Vietnamese sub-contractors is international tenders for construction and installation in Viet Nam.

Question 95

We note the response to Question 5 of WT/ACC/VNM/7. We fully understand Viet Nam's position that accession to the GPA involves an assessment of whether a country's overall capability and level of development and administrative systems has reached a point where it makes sense to participate.

We encourage Viet Nam to continue in its ongoing efforts to make its procurement systems more transparent and open to competition. We would appreciate information on the steps Viet Nam is taking in this regard.

Viet Nam should become an observer in the Government Procurement Committee as soon as possible, and give seriously consideration to joining the Agreement.

Whether or not Viet Nam joins the GPA in the context of its WTO accession (and we certainly would urge Viet Nam to take this step), please outline Viet Nam's plans for making its government procurement regime more transparent and open.

Answer:

Further improvements to Viet Nam's government procurement regime are being made with a view to increasing its transparency and openness, particularly by drafting an Ordinance on Tendering (The legal power of the Ordinance on Tendering has higher than that of the Decree on Tendering).

V. TRADE-RELATED INTELLECTUAL PROPERTY REGIME

1. General

(a) Intellectual property policy

Question 96

Please indicate the status of the draft amendment to the Decree No. 63/CP of 24 October 1996 of the Government on detailed provisions of industrial property. Please explain in detail the scope of protection of registered trademarks under these new draft provisions. Please describe in detail the protection of well-known trademarks under the new draft provisions.

Answer:

The Decree No. 06/2001/ND-CP on amendments and supplements to a number of Articles of the Decree No. 63/CP dated 24 October 1996 on detailed provisions of industrial property was promulgated by the Government of Viet Nam on 1 February 2001.

As provided for in Article 1, para.24 of the Decree 06/2001/ND-CP, the scope of protection of trademark rights is, compared to that of the Decree 63/CP, broader and in compliance with TRIPS Agreement provisions. Particularly, in this Decree, the following acts shall also be deemed an infringement of the trademark owner's rights: "the use of signs which are identical with the trademark protected by a Trademark Registration Certificate or by an International Registration for goods or services similar to, or related to goods or services in the list registered with the trademark and/or the use of signs which are similar to the protected trademark for goods or services identical with, or similar to, or related to goods or services in the list registered with the trademark, if such use is liable to create confusion of the origin of goods or services".

As provided for in the Decree 06/2001/ND-CP, a “well-known trademark” is the trademark which is continuously used for so reputable goods or services that the trademark is widely known (Article 1, para.2 of the Decree). The industrial property rights of a well-known trademark are protected without time limit, from the date on which the trademark is recognised as a well-known trademark. The procedures for recognition of well-known trademarks are to be provided for in the Circular on the implementation of the Decree 63/CP, amended by the Decree 06/2001/ND-CP, which is scheduled to be issued in the 3rd quarter of the year 2001, by the Ministry of Science, Technology and Environment.

Apart from the use of a well-known trademark for commercial purposes without its owner’s permission, the following acts shall also be deemed an infringement of well-known trademark rights (Article 1, para.24 of the Decree 06/2001/ND-CP): “the use of signs which are identical with, or similar to the well-known trademark, or signs which constitute a translation or a transliteration of the trademark for any goods or services, including goods or services which are not identical with, or not similar to, or not related to the reputable goods or services bearing the well-known trademark, if such use is liable to create confusion of the origin of goods or services or wrong impression of relationship between the user of the signs and the owner of the recognised well-known-trademark”.

Question 97

We seek the submission by Viet Nam of a more detailed action plan based on the document model WT/ACC/9 for the implementation of the TRIPS Agreement by the time of accession.

Answer:

Viet Nam’s Action plan for the implementation of WTO TRIPS Agreement (document WT/ACC/VNM/12) was made in compliance with the model document provided by the WTO Secretariat has received high appreciation from the Working Party members at the 4th session of the Working Party. Viet Nam shall continue to complete its Action Plan for the implementation of the WTO TRIPS Agreement in accordance with the format of document WT/ACC/9 so as to submit it to the Working Party members as soon as possible.

(c) Membership of international intellectual property conventions and of regional or bilateral agreements

Question 98

Please inform about the status of promulgating provisions in line with Art.34.1 of the TRIPS Agreement in Vietnamese law.

Answer:

The draft of inter-ministerial Circular of the Supreme People’s Court, the Supreme People’s Office for Supervision and Control and the Ministry of Science, Technology and Environment providing guidelines for the judgement of cases relating to industrial property, including provisions complying with Article.34.1 of the TRIPS Agreement, has been completed and is about to be submitted to the competent authorities for issuance (scheduled to be issued in the 3rd quarter of 2001).

(e) Fees and taxes

Question 99

Could you please provide an update on the current state of legislation in the area of TRIPS: Please indicate the status of the draft amendment to the Circular No. 23 TC/TCT of 9 May 1997 of the Ministry of Finance to provide for a uniform rate applied to both foreigners and Vietnamese concerning the fees and charges in the field of industrial property.

Answer:

At present, amendments to the Circular No. 23TC/TCT dated 9 May 1997 of the Ministry of Finance to provide for the uniform rate applied to both foreigners and Vietnamese concerning fees and charges in the field of industrial property is being reconsidered because in our view, the rate of fees and charges in the field of industrial property is a matter of administrative procedures and therefore, is a permitted exception to national treatment as provided for in Article 2 of the Paris Convention.

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

(a) Copyright and related rights

Question 100

Please indicate the status of the draft amendment to the Decree No. 76/CP of 26 November 1996 of the Government on copyrights. Please explain the protection of computer programs and compilations of data as foreseen under this new draft.

Answer:

At present, the draft amendment to the Decree No. 76/CP dated 26 November 1996 of the Government is in preparation. Provisions on the protection of computer programs and compilations of data in the draft amendment shall comply with the corresponding provisions of the TRIPS Agreement.

(c) Geographical indications including appellations of origin

Question 101

Please provide status information for a new regulation on the protection of geographical indications. Please describe in detail the protection granted to geographical indications as foreseen under this new regulation.

Answer:

On 3 October 2000, the Government promulgated the Decree No. 54/2000/ND-CP on industrial property rights protection of business secrets, geographical indications, trade names and the protection of the rights of repression of unfair competitive practices relating to industrial property. As provided for in Article 5 of this Decree, the industrial property rights of geographical indications shall be automatically established if all prescribed conditions are fully satisfied without requirement for registration with any State competent authority. Particularly, the provisions on protection of geographical indications are as follows:

Article 10. Geographical indication

1. Protectable geographical indications are information on geographical origins of goods that satisfy all the following conditions:
 - a) Being expressed in the form of a word, phrase, sign, symbol or picture which serves to indicate a country or a region, a locality of a country;
 - b) Being presented on goods, packages of goods or transaction documents relating to purchase or sale of goods to indicate that the goods originates from a country, region or locality where the peculiar characteristics of quality, reputation, fame, or other characteristics of the goods are essentially attributable to its geographical origins.
2. Where geographical indications are appellations of origin of goods, the protection thereof shall be implemented in accordance with existing regulations on appellations of origins.
3. Geographical information that has become a common name of goods and lost the function of indicating geographical origins shall not be protected as a geographical indication according to this Decree.

Article 11. Persons entitled to use geographical indications

Persons entitled to use a geographical indication are those organizations, individuals that conduct activities of manufacturing the goods bearing that indication in the territory of respective country, region, or locality, provided that the existing reputation or fame of the goods manufactured by those persons must be preserved.

Article 12. Content of industrial property rights of geographical indications

1. Persons entitled to use a geographical indication have the right to present that indication on goods, packages of goods, transaction documents in order to purchase, sale and advertise those goods.
2. The right to use geographical indications shall not be transferred.

Article 13. Term of industrial property protection of geographical indications

The right to use geographical indications shall be protected as long as conditions of protectable geographical indications provided for in Article 10.1 and conditions of manufacturing activities of persons entitled to use geographical indications as provided for in Article 11 of this Decree still are fully satisfied.

Article 19. Acts of infringement of industrial property right of geographical indications

Acts of infringement of industrial property right of geographical indications include:

1. Using any commercial indications which are identical with or similar to protected geographical indications, thus creating wrong impression of the geographical origin of goods;

2. Using any commercial indications which are identical with or similar to protected geographical indications for identical, similar or related goods, thus causing damage to reputation, fame of goods bearing such geographical indications, even where such indications are accompanied by expressions such as “method”, “type”, “style”, “imitation”, or the like;
3. Using geographical indications of wines or spirits for those not originating in indicated territories, even where the true origin of goods is indicated or geographical indications are used in the form of translation into other languages or accompanied by expressions such as “type”, “style”, “kind”, “imitation”, or the like.”

As provided for in the Decree No. 54/2000/ND-CP, persons entitled to use geographical indications have the right to demand injunctions from the State competent authorities to stop the persons who commit acts of infringement from his infringement and to claim damages from those persons (Article 21).

The provisions on geographical indications protection in this Decree shall only be applied to geographical indications other than appellations of origin of goods. Appellations of origin of goods are protected under the Decree 63/CP. Therefore, geographical indications including appellations of origin of goods are adequately protected in compliance with TRIPS Agreement requirements.

(e) Patents

Question 102

Please indicate the status of the draft Circular of the Ministry of Science, Technology and Environment providing the application form, the examination guidelines and deposit of microorganisms for the purpose of examination of the patent applications in respect of microorganisms.

Answer:

The provisions relating to the application form, the examination guidelines and micro-organism deposit procedures for the purpose of examination of the patent applications in respect of microorganisms are being drafted by the Ministry of Science, Technology and Environment and are scheduled to be issued in the form of the Circular on the implementation of the amended Decree No. 63/CP in the 3rd quarter of 2001.

(f) Plant variety protection

Question 103

Please inform about the status of promulgating provisions concerning the protection of new plant varieties in accordance with the UPOV standard.

Answer:

The Decree No. 13/2001/ND-CP of the Government on the protection of new plant varieties was issued on 20 April 2001.

(g) Layout designs of integrated circuits

Question 104

Please indicate the status of promulgating regulations on the protection of layout-designs of integrated circuits.

Answer:

The draft of the Government's Decree on the protection of layout-designs of semiconductor integrated circuits is being considered by the relevant competent authorities. This draft Decree is scheduled to be submitted to the Government for promulgation in the year 2001.

(h) Requirements on undisclosed information, including trade secrets and test data

Question 105

Please provide status information for new regulations concerning the protection of undisclosed information, trade secrets and test data in accordance with the standards as provided for in Article 39 and Article 39.3 of the TRIPS Agreement.

Answer:

Business secrets (including trade secrets, test data) are protected as provided for in the Government's Decree No. 54/2000/ND-CP of 3 October 2000 on the protection of business secrets, geographical indications, trade names and the protection of right of repression of unfair competition relating to industrial property. Business secrets shall be protected as long as they fully satisfy all prescribed conditions without being required for registration. Particularly, provisions on the protection of business secrets prescribed in the Decree 54/2000/ND-CP are as follows:

Article 6. Business secret

1. Protectable business secrets are investment results in the form of information satisfying all the following conditions:
 - It is not common knowledge;
 - It is applicable to business activities and when used, it renders its holder advantages over those who do not hold or use such information;
 - It is kept secret by its owner with necessary measures so that such information shall neither be disclosed nor be easily accessible.
2. Other secret information not relating to business activities, such as secrets of personal status, State management, security, national defense shall not be protected as business secrets.

Article 7. Owners of industrial property right of business secrets

1. Owners of industrial property right of business secrets are organizations, individuals that have made investment to create or acquire investment results being business secrets.

2. In case where a business secret is created or acquired by an employee, a contracting party while performing assigned tasks, such business secret shall be under ownership of the employer or assignor party, except otherwise agreed between interested parties.

Article 8. Content and term of protection of industrial property rights of business secrets

1. The owner of industrial property right of business secrets have the right to possess, use and dispose of such business secrets according to applicable laws and regulations;
2. Rights of the owner of industrial property right of business secrets shall be protected as long as such business secrets still fully satisfy all conditions provided in Article 6.1 of this Decree.

Article 9. Transfer of industrial property right of business secrets

1. Industrial property right of business secrets may be transferred or inherited according to applicable laws and regulations;
2. The transfer of industrial property right of business secrets shall be effected in the form of a written contract, in which the transferor must clearly indicate the business secret to be transferred. In cases where the contractual parties agree to transfer only the right to use a business secret (business secret licensing), the transferee shall be obliged to take necessary secret-keeping measures as required by the transferor.

Article 18. Acts of infringement of industrial property right of business secrets

Acts of infringement of industrial property right of business secrets include:

1. Accessing, acquiring information on business secrets by taking acts against secret-keeping measures of lawful owner of such business secrets;
2. Disclosing, using information on business secrets without permission of such business secret owner;
3. Breaching secret-keeping contract or deceiving or abusing the trust of persons in charge of secret-keeping, abusing the trust to access, acquire and disclose the information on business secrets of the owner;
4. Accessing, acquiring others' information on business secrets submitted for approval in accordance with licence application procedures relating to doing business or marketing of products, especially pharmaceutical products and agricultural-chemical products, or by taking acts against secret-keeping measures of administrative agencies, or using such information for the commercial purposes, including for obtaining approval of licence application relating to doing business or marketing of products.”

As provided for in the Decree No. 54/2000/ND-CP, business secret owners have the right to demand injunctions from the State competent authorities to stop the persons who commit acts of infringement from his infringement and to claim damages from those persons (Article 21).

4. Enforcement

(d) Any special border measures

Question 106

Please indicate the status of new provisions on border measures and procedures against infringement of copyrights and related rights.

Answer:

The draft of regulations on measures and procedures of border-control against acts infringing copyright and related rights is being drafted by relevant authorities. This document is scheduled to be submitted to the competent authorities in the 4th quarter of 2001.

VI. TRADE-RELATED SERVICES REGIME

1. General

- Banking and Financial Services

Question 107

It is our understanding that Viet Nam is currently considering a Law on Insurance Business. Could Viet Nam please provide this Law to the Working Party as soon as possible? When does Viet Nam expect this law to be finalized and implemented.?

Answer:

The Law on Insurance Business was approved on 9 December 2000 by the National Assembly of the Socialist Republic of Viet Nam and became effective as of 1 April 2001. The text of this Law is provided together with this Document.

VII. INSTITUTIONAL BASE FOR TRADE AND ECONOMIC RELATIONS WITH THIRD COUNTRIES

1. Bilateral or plurilateral agreements

Question 108

Reply 59 in WT/ACC/VNM/9 states that “According to the Trade Agreement on Textile and Clothing between Viet Nam and EU. Viet Nam must reduce tariff on a number of EU textile products imported to Viet Nam during the period of 10 years starting at 1 January, 1996.” Are these tariff reductions made on an MFN basis? If not, how does Viet Nam intend to provide the MFN treatment required in Article 1 when it accedes to the WTO?

Answer:

Viet Nam shall abide by MFN treatment provisions specified in Article 1 of GATT 1994 when it becomes a WTO Member.

ANNEX ICustoms fees

(Issued together with Inter-Ministerial Circular No.71/2000/TTLT/BTC-TCHQ dated 19 July 2000 of the Ministry of Finance and the General Department of Customs)

I. CUSTOMS CLEARANCE FEE

| No. | Kind of goods | Calculation unit | Fee rates |
|-----|--|-------------------|-------------------------------|
| I | Ordinary cargo: | | |
| 1 | Cargo transported by ships, barges (bulk goods, goods of different sorts contained in bags, cans, drums, barrels, tanks, reservoirs) | | |
| a. | - Minimum fee rate for 1 ton or less | VND/ton | 20,000 |
| | - Fee rate for the second ton onwards | VND/ton | 1,200 |
| b. | Goods transported by ships (goods of the same sort): fee rate per ton | VND/ton | 500 |
| | Maximum customs clearance fee rate for: | | |
| | - Ships of a capacity of less than 10,000 GRT (Gross registered tonnage) | Ship | Not exceeding 3 million VND |
| | - Ships of a capacity of between 10,000 and less than 20,000 GRT | Ship | Not exceeding 6 million VND |
| | - Ships of a capacity of between 20,000 and less than 70,000 GRT | Ship | Not exceeding 15 million VND |
| | - Ships of a capacity of 70,000 GRT or more | Ship | Not exceeding 20 million VND |
| 2 | Goods transported by land | | |
| a. | - Goods transported by car | VND/ton | 5,000 |
| b. | - Goods transported by train | VND/ton | 2,000 |
| 3 | Postal packages, parcels | | |
| | - Of a weight of between 5 kg and less than 20 kg | VND/clearing case | 7,000 |
| | - Of a weight of between 20 kg and 50 kg | VND/clearing case | 10,000 |
| | - Of a weight of more than 50 kg, for every extra 10 kg a surcharge shall be collected | VND/10 kg | 500 |
| | - Of a weight of 1 ton or more, a surcharge shall be collected | VND/ton | 3,000 |
| II | Cargo contained in containers | | |
| 1 | Cargo contained in 20-foot containers | VND/container | 60,000 |
| 2 | Cargo contained in 40-foot containers | VND/container | 120,000 |
| III | Cargo being automobiles and motorcycles of all kinds | | |
| 1 | Automobiles of all kinds | | |
| | - Automobiles in complete units | VND/unit | 18,000 |
| | - Automobile components in complete sets | VND/set | 20,000 |
| 2 | Motorcycles (units and complete sets) | VND /unit or set | 6,000 |
| IV | Cargo being gold and gemstone | | |
| | - Fee rate for 1 tael (37.5 gr) or less | VND/clearing case | 15,000 |
| | - Fee rate for the second tael (37.5 gr) onwards | VND /tael | 1,000 |
| | - Maximum fee rate for each clearance case | | Not exceeding 1.5 million VND |
| V | Import and export of foreign currencies | | |
| | - Import, export of less than 100,000 USD (or equivalent amounts of other foreign currencies) | VND | 100,000 |
| | - For every extra 100,000 USD, a surcharge shall be collected | VND | 80,000 |
| | - Maximum rate for each clearance case | VND | Not exceeding 1.5 million |

II. FEES FOR GOODS AND LUGGAGE CONSIGNED AND PUT AT CUSTOMS WAREHOUSES (CUSTOMS WAREHOUSE FEE)

| No. | Kind of goods | Calculation unit | Fee rates (VND per night and day) |
|-----|--|------------------|-----------------------------------|
| 1 | Automobiles of all kinds | | |
| | - Trucks of a capacity of 2 tons or more, passenger cars with 15 seats or more | Unit | 50,000 |
| | - Trucks of a capacity of less than 2 tons, tourist cars with 14 seats or less | Unit | 30,000 |
| 2 | Motorcycles, mopeds | Unit | 10,000 |
| 3 | Computers, fax machines, photocopiers | Unit | 10,000 |
| 4 | Air-conditioners, radios, cassettes, communication machines, television sets, video sets | Unit | 5,000 |
| 5 | Gold | Tael (37.5 gr) | 7,000 |
| 6 | Gemstone | Tael | 10,000 |
| 7 | Other goods | | |
| a. | Small postal parcels of a weight of less than 20 kg | Parcel | 2,000 |
| b. | Small postal parcels of a weight of between 20 kg and 100 kg | Parcel | 4,000 |
| c. | Goods packages of a weight of between more than 100 kg and 1,000 kg | Package | 5,000 |
| d. | Goods packages of a weight of more than 1,000 kg | Package | 10,000 |

III. CUSTOMS ESCORTING FEE – CUSTOMS SEALING FEE

| No. | Means of transport | Calculation unit | Fee rate (VND) |
|-----|--|------------------|----------------|
| I | Customs escorting fee | | |
| 1 | Automobiles: | | |
| | - Escorting distance of less than 100 km | Unit | 48,000 |
| | - Escorting distance of between 100 km and 150 km | Unit | 96,000 |
| | - Escorting distance of more than 150 km, a surcharge shall be collected for every extra 50 km | Unit | 30,000 |
| 2 | Train | | |
| | - Escorting distance of less than 100 km | Wagon | 42,000 |
| | - Escorting distance of between 100 km and 150 km | Wagon | 96,000 |
| | - Escorting distance of more than 150 km, a surcharge shall be collected for every extra 50 km | Wagon | 20,000 |
| 3 | Ship | | |
| a. | Fee rates for ships of a weight of less than 300 GRT as those for river or sea barges (as indicated in item 4 below) | | |
| b. | Fee rates for ships of a weight of between 300 GRT and 1,000 GRT: | | |
| | - Escorting distance of less than 200 km | Ship | 360,000 |
| | - Escorting distance of between 200 km and 300 km | Ship | 720,000 |
| | - Escorting distance of more than 300 km, a surcharge shall be collected for every extra 50 km | Ship | 100,000 |
| c. | Fee rates for ships of a weight of more than 1,000 GRT: | | |
| | - Escorting distance of less than 200 km | Ship | 600,000 |
| | - Escorting distance of between 200 km and 300 km | Ship | 1,200,000 |
| | - Escorting distance of more than 300 km, a surcharge shall be collected for every extra 50 km | Ship | 150,000 |

| No. | Means of transport | Calculation unit | Fee rate (VND) |
|-------------------------------|--|-----------------------|----------------|
| 4 | River or sea barges | | |
| | - Escorting distance of less than 200 km | Barge | 240,000 |
| | - Escorting distance of between 200 km and 300 km | Barge | 300,000 |
| | - Escorting distance of more than 300 km, a surcharge shall be collected for every extra 50 km | Barge | 50,000 |
| 5 | Crafts, boats | | |
| | - Escorting distance of less than 100 km | Boat | 60,000 |
| | - Escorting distance of between 100 km and 150 km | Boat | 120,000 |
| | - Escorting distance of between 150 km and 200 km | Boat | 180,000 |
| | - Escorting distance of more than 200 km, a surcharge shall be collected for every extra 50 km | Boat | 240,000 |
| II Customs sealing fee | | | |
| 1 | Paper seal fee: | | |
| | - Seals which use less than 10 sealing papers | Per sealing procedure | 5,000 |
| | - Seals which use from 10 to less than 20 sealing papers | Per sealing procedure | 10,000 |
| | - Seals which use from 20 to less than 50 sealing papers | Per sealing procedure | 20,000 |
| | - Seals which use more than 50 sealing papers | Per sealing procedure | 30,000 |
| 2 | Lead seal fee | Per sealing case | 5,000 |
| 3 | Seal ring fee | Per sealing case | 20,000 |

IV. FEE FOR CARGO AND LUGGAGE TRANSITTING THROUGH VIET NAM (TRANSIT FEE)

| No. | Means of transport – Transiting Distance | Calculation unit | Fee rate (VND) |
|-----|---|------------------|----------------|
| 1 | Automobiles | | |
| | - Distance of less than 100 km | Unit | 60,000 |
| | - Distance of 100 km or more, a surcharge shall be collected for every extra 50 km | Unit | 24,000 |
| 2 | Train | | |
| | - Distance of less than 100 km | Wagon | 72,000 |
| | - Distance of 100 km or more, a surcharge shall be collected for every extra 50 km | Wagon | 36,000 |
| 3 | Ship | | |
| a. | Fee rates for ships of a weight of between 300 GRT and less than 1,000 GRT: | | |
| | - Distance of less than 100 km | Ship | 120,000 |
| | - Distance of 100 km or more, a surcharge shall be collected for every extra 50 km | Ship | 60,000 |
| b. | Fee rates for ships of a weight of between 1,000 GRT and less than 3,000 GRT | | |
| | - Distance of less than 200 km | Ship | 300,000 |
| | - Distance of 200 km and more, a surcharge shall be collected for every extra 50 km | Ship | 70,000 |
| c. | Fee rates for ships of a weight of between 3,000 GRT and 5,000 GRT | | |
| | - Distance of less than 200 km | Ship | 720,000 |
| | - Distance of 200 km and more, a surcharge shall be collected for every extra 50 km | Ship | 120,000 |
| d. | Fee rates for ships of a weight of more than 5,000 GRT | | |
| | - Distance of less than 200 km | Ship | 1,200,000 |
| | - Distance of 200 km and more, a surcharge shall be collected for every extra 50 km | Ship | 240,000 |

V. ADMINISTRATIVE FEE

| |
|--|
| Fee rate for re-certification of cargo, luggage documentation: 12,000 VND/case |
|--|

ANNEX II

Export and Import Goods Price Differential Surcharge**1. Price differential surcharge collected from exported goods**

| No | Description of goods | HS Code | Rate of payable price differentials (%) |
|----|-------------------------------------|---------|---|
| 1 | Raw cashew nuts for export | | 10 |
| 2 | Unprocessed rubber latex for export | | 6 |

2. Price differential surcharge collected from imported goods

| No | Description of goods | HS Code | Rate of payable price differentials (%) |
|----|--|--|---|
| 1 | Diocetyl orthophthalates | 2917.32.00 | 5 |
| 2 | Paperboards and flat cartons used for packing, having a maximum horizontal pressure resistance of 3 kgf/cm ² and vertical pressure resistance of 14 kgf | Ex. 4804 | 10 |
| 3 | Sanitary ceramic wares | 6910.10.00 6911.90.00 | 20 20 |
| 4 | Drinking glasses, cups and kitchenware of porcelain or china Drinking glasses, cups and kitchenware of glass other than of lead crystal | 6910.10.00 7013.10.00 7013.29.00 7013.32.00 7013.39.00 7013.99.00 | 20 20 20 20 20 20 |
| 5 | Table, floor, ceiling, wall and roof fans of a power below 100W | 8414.51.00 | 20 |
| 6 | Glass inners for commonly-used vacuum flasks of a capacity not exceeding 2.5 litre Commonly-used vacuum flasks of a capacity not exceeding 2.5 litre, other than piston vacuum flasks and self-boiling vacuum flasks) | 7012.00.00 9617.00.10 | 30 40 |
| 7 | Welded and zinc-galvanized pipes and tubes in steel | | 10 |
| 8 | Bars and rods in steel CT3, not further worked, reinforced bars and rods in steel CT5 | | 10 |
| 9 | Steel sheets CT3 and CT3C | | 4 |
| 10 | PVC powder | | 5 |
| 11 | Uncoated printing paper, writing paper | 4802.51.10 4802.52.10 4802.60.10 4823.51.10 4823.59.10 | 10 10 10 10 10 |

| No | Description of goods | HS Code | Rate of payable price differentials (%) |
|----|--|------------|---|
| 12 | Ceramic and granite flooring tiles not exceeding 400 x 400 mm and those kinds of which either side is 400mm or less | 6810.11.00 | 10 |
| | | 6810.19.10 | 10 |
| | | 6910.19.90 | 10 |
| | | 6904.10.00 | 10 |
| | | 6904.90.00 | 10 |
| | | 6907.10.00 | 10 |
| | | 6907.90.00 | 10 |
| | | 6908.10.00 | 10 |
| | | 6908.90.00 | 10 |
| 13 | Clinker | 2523.10.00 | 10 |
| 14 | Light brown sheet glass of a thickness between 5mm and 12 mm; dark green sheet glass of a thickness between 3mm and 6 mm; white (transparent) and flat sheet glass of a thickness between 1.5mm and 12 mm (not including flower-worked glass, multi-layer glass, safety glass, wired glass, glass having reflecting layer) | 7003.12.00 | 10 (as from 1/1/2002) |
| | | 7003.19.90 | 10 (as from 1/1/2002) |
| | | 7004.20.90 | 10 (as from 1/1/2002) |
| | | 7004.90.90 | 10 (as from 1/1/2002) |
| | | 7016.90.00 | 10 (as from 1/1/2002) |
| 15 | Bars and rods of steel for construction in wound or twisted coils (containing indentations, ribs, grooves), measuring from 10-40mm in diameter | 7213.10.10 | 10 (as from 1/1/2002) |
| | | 7214.20.20 | 10 (as from 1/1/2002) |
| 16 | Bars and rods of steel for construction, not further worked, measuring from 6-40mm in diameter | 7214.10.20 | 10 (as from 1/1/2002) |
| | | 7214.99.00 | 10 (as from 1/1/2002) |
| | | 7215.50.90 | 10 (as from 1/1/2002) |
| | | 7215.90.90 | 10 (as from 1/1/2002) |
| 17 | V angle sections of steel of a height of 20-125mm; C-shaped sections of steel of a height not exceeding 160mm | 7216.50.10 | 10 (as from 1/1/2002) |
| | | 7216.50.90 | 10 (as from 1/1/2002) |
| 18 | L angle sections of steel of a height of 20-125mm | 7216.21.00 | 10 (as from 1/1/2002) |
| | | 7216.40.10 | 10 (as from 1/1/2002) |
| 19 | U-shaped sections of steel of a height not exceeding 160mm | 7216.10.00 | 10 (as from 1/1/2002) |
| | | 7216.31.10 | 10 (as from 1/1/2002) |
| | | 7216.31.90 | 10 (as from 1/1/2002) |
| 20 | I-shaped sections of steel of a height not exceeding 160mm | 7216.10.00 | 10 (as from 1/1/2002) |
| | | 7216.32.10 | 10 (as from 1/1/2002) |
| | | 7216.32.90 | 10 (as from 1/1/2002) |
| 21 | H-shaped sections of steel of a height not exceeding 160mm | 7216.10.00 | 10 (as from 1/1/2002) |
| | | 7216.33.10 | 10 (as from 1/1/2002) |
| | | 7216.33.90 | 10 (as from 1/1/2002) |
| 22 | Flat-rolled steel, zinc-galvanized, of a thickness of 0.25-0.55mm and length not exceeding 3500mm; flat-rolled steel, zinc-galvanized, corrugated; flat-rolled steel, galvanized with non-ferrous metals, corrugated | 7210.41.10 | 10 (as from 1/1/2002) |
| | | 7210.49.10 | 10 (as from 1/1/2002) |
| | | 7210.61.10 | 10 (as from 1/1/2002) |
| | | 7210.69.10 | 10 (as from 1/1/2002) |
| | | 7210.70.40 | 10 (as from 1/1/2002) |
| | | 7210.70.50 | 10 (as from 1/1/2002) |
| | | 7210.70.90 | 10 (as from 1/1/2002) |
| | | 7210.90.40 | 10 (as from 1/1/2002) |
| | | 7210.90.50 | 10 (as from 1/1/2002) |

ANNEX III

Certain Highly Toxic Chemicals Subject to Prohibition on Trading

(as indicated in the Decision No.0088/2000/QD-BTM dated 18 January 2000 of the Minister of Trade to issue the Detailed List of goods subject to prohibition on trading, commercial services subject to prohibition on providing; goods, services subject to trading restrictions, conditionally traded goods, services)

| No. | Name of chemicals | Formula | Concentration |
|-----|---|-------------------|---------------|
| 1 | Aldrin | $C_{12}H_8Cl_6$ | |
| 2 | BHC (lindane) | $C_6H_6O_6$ | |
| 3 | Chordane | | |
| 4 | DDT | | |
| 5 | Dieldrin | | |
| 6 | Eldrin | | |
| 7 | Heptachlor | $C_{10}H_5Cl_5$ | |
| 8 | Isobenzen | | |
| 9 | Isodrin | | |
| 10 | Methamidophos | $C_2H_8NO_2PS$ | |
| 11 | Monocrotophos | $C_7H_{14}NO_5P$ | |
| 12 | Methyl Parathion | $C_8H_{10}NO_5PS$ | |
| 13 | Ethyl Parathion | | |
| 14 | Phosphamidon | | |
| 15 | Polychlorocamphere | | |
| 16 | Strobane | | |
| 17 | Captan | | |
| 18 | Captofol | | |
| 19 | Hexachlorobenzen | C_6Cl_6 | |
| 20 | 24,5 T (Brochtoc, Decamine) | | |
| 21 | Axit cyanhydric and its salts | HCN | 0,0003 |
| 22 | Hexacloro cyclohexan | $C_6H_6Cl_6$ | 0,0001 |
| 23 | Methyl parathion (demetil paranitro photpho, volfatoc...) | | 0,0001 |

| No. | Name of chemicals |
|-----|---|
| 1 | O-Alkyl (\leq C10, including cycloalkyl), Alkyl (Me, Et, n-Pr or i-Pr) phosphonofluoridates |
| 2 | O-Alkyl (\leq C10, including cycloalkyl), N,N-dialkyl (Me, Et, n-Pr or i-Pr) phosphoramidocyanidates |
| 3 | O-Alkyl (H or C,10, including cycloalkyl), S-2-dialkyl (Me, Et, n-Pr or i-Pr)-aminoethyl alkyl (Me, Et, n-Pr or i-Pr) phosphonothiolates and respective alkylate or protonate salts |
| 4 | Sulfur mustards: 2-Chloroethylchloromethylsulfide, (2625-76-5) Mustard gas: Bis(2-chloroethyl) sulfide, (505-60-2), Bis(2-chloroethylthio) methane, (63869-13-6) Sesquimustard: 1,2-Bis(2-chloroethylthio)ethane, (3563-36-8) 1,3-Bis(2-chloroethylthio)-n-propane, (63905-10-2) 1,4-Bis(2-chloroethylthio)-n-butane, (142868-93-7) 1,5-Bis(2-chloroethylthio)-n-pentane, (142868-94-8) Bis(2-chloroethylthiomethyl) ether, (63918-90-1) O-Mustard: Bis(2-chloroethylthioethyl) ether, (63918-89-8) |
| 5 | Lewisites: Lewisite 1: 2-chlorovinyl dichloroarsine, (541-25-3) Lewisite 2: Bis(2-chlorovinyl)chloroarsine, (40334-69-8) Lewisite 3: Tris(2-chlorovinyl)arsine, (40330-70-1) |
| 6 | Nitrogen mustards: HN1: Bis(2-chloroethyl) ethylamine, (538-07-8) HN2: Bis(2-chloroethyl) methylamine, (51-75-2) HN3: Tris(2-chloroethyl) amine, (555-77-1) |
| 7 | Saxitoxin, (35523-89-8) |
| 8 | Ricin, (9009-86-3) |
| 9 | Alkyl (Me, Et, n-Pr or i-Pr) phosphonyldifluorides |
| 10 | O-Alkyl (H or \leq C10, including cycloalkyl) 0-2-dialkyl (Me, Et, n-Pr or i-Pr)-aminoethyl alkyl (Me, Et, n-Pr or i-Pr) phosphonites and respective alkylate or protonate salts |
| 11 | Chlorarsine: O-Isopropyl methylphosphonochloridate, (1445-76-7) |
| 12 | Chlorosoman: O-Pinacolyl ethylphosphonochloridate, (7040-57-5) |
| 13 | Amiton: O,O-Diethyl S-[2-(diethylamino)ethyl] phosphorothiolate, (78-53-5) and respective alkylate or protonate salts |
| 14 | PFIB: 1,1,3,3,3-Pentafluoro-2-(trifluoromethyl)-1-propene, (382-21-8) |
| 15 | BZ: 3-Quinuclidinyl beilate, (6581-06-2) |
| 16 | Methylphosphonyl dichloride, (676-97-1), Dimethyl methylphosphonate, (756-79-6) |
| 17 | N,N-Dialkyl (Me, Et, n-Pr or i-Pr) phosphoramidic dihalides |
| 18 | Diakyl (Me, Et, n-Pr or i-Pr) N,N-dialkyl (Me, Et, n-Pr or i-Pr) phosphoramidates |
| 19 | 2,2-Diphenyl-2-hydroxyacetic acid, (76-93-7) |
| 20 | Quinuclidine-3-ol, (1619-34-7) |
| 21 | N,N-Dialkyl (Me, Et, n-Pr or i-Pr) aminoethyl-2-ols and respective protonate salts |
| 23 | N,N-Dialkyl (Me, Et, n-Pr or i-Pr) aminoethane-2-thiols and respective protonate salts |
| 24 | Thiodiglycol: Bis (2-hydroxyethyl) sulfide, (111-48-8) |
| 25 | Pinacolyl alcohol: 3,3-Dimethylbutane-2-ol, (464-07-3) |
| 26 | Phosgene: Carbonyl dichloride, (75-44-5) |
| 27 | Chloropicrin: Trichloronitromethane, (76-06-2) |

ANNEX IV

The Toxic Chemicals and Products Containing Toxic Chemicals that are Conditionally Traded

(as indicated in the Decision No.0088/2000/QĐ-BTM dated 18 January 2000 of the Minister of Trade to issue the detailed List of Goods subject to prohibition on trading, commercial services subject to prohibition on providing; goods, services subject to trading restrictions, conditionally traded goods, services)

| No. | Name of chemicals | Formula | Concentration |
|-----|---|--|----------------------|
| 1 | Acetonitril | CH ₃ -CN | |
| 2* | Anilin | C ₆ H ₇ -N | |
| 3* | Benzene | C ₆ H ₆ | |
| 4 | Choloroform | CHCl ₃ | |
| 5* | Furfurol | C ₅ H ₄ O ₂ | |
| 6 | n-Hexan | CH ₃ (CH ₂) ₄ CH ₃ | |
| 7 | Piridin | C ₅ H ₅ N | |
| 8 | Carbon tetra chloro | CCl ₄ | |
| 9* | Tuluen | C ₇ H ₈ | |
| 10* | Ethylen Glycol | CH ₂ OH-CH ₂ OH | |
| 11* | n-Butanol | CH ₃ (CH ₂) ₂ CH ₂ OH | |
| 12* | Aldehyd acetic | CH ₃ CHO | |
| 13* | IsoPropanol | CH ₃ CHOHCH ₃ | |
| 14* | Asbestos raw material | | |
| 15* | Selen and selen compounds | Se | |
| 16* | Cadmium and cadmium compounds | Cd | |
| 17 | Thallium | Tl | |
| 18* | Xylen | C ₆ H ₄ (CH ₃) ₂ | |
| 19* | Acid Pechloric | HClO ₄ | |
| 20 | Acrolein | CH ₂ =CH-CHO | +0.002 |
| 21* | Amoniac | NH ₃ NH ₄ OH | +0.002 |
| 22 | Anhydric acsenio and anhydrit acsenic (asen pentoxide) | As ₂ O ₃ As ₂ O ₅ | +0.0003 |
| 23 | Acsenua hydrogen | AsH ₃ | +0.0003 |
| 24* | Anhydrit carbonic | CO ₂ | 0.1% mg/l |
| 25* | Anhydrit cromatic | CrO ₃ | 0.0001 mg/l |
| 26* | Anilin | C ₆ H ₅ -NH ₂ | 0.005 |
| 27* | Antimony | Sb | 0.0005 |
| 28* | Hydrochloric acid and hydrochlorua (calculated as hydrochlorua) | HCl | 0.010 |
| 29* | Acid nitric (calculated as N ₂ O ₅) | HNO ₃ | 0.005 |
| 30* | Acid acetic | CH ₃ COOH | 0.005 |
| 31 | Cyanhydric calculated as HCN | | |
| 32* | Acid sulfuric and anhydrit sulfuric | H ₂ SO ₄ | 0.002 |
| 33* | Acid phosphoric | H ₃ PO ₄ | |
| 34* | Acid picric | C ₆ H ₃ K ₈ O ₇ | |
| 35* | Bary oxide containing 10% free SiO ₂ | BaO | 0.005 |
| 36* | Bary + dissolvable compound | (Ba) | |
| 37* | Benzidin | C ₁₂ H ₂₂ N ₂ | 0.001 |
| 38* | Brom | Br ₂ | 1 ml/m ³ |
| 39* | Bromua metyl | Br-CH ₃ | 10 ml/m ³ |
| 40* | Bromofoc | CHBr ₃ | |
| 41* | Bicromat alkali | Cr ₂ O ₇ -(NaK) | 0.0001 |
| 42* | Lead and inorganic compounds of lead | Pb | 0.00001 0.0001 |
| 43* | Chlorine | Cl ₂ | 0.050 |

| No. | Name of chemicals | Formula | Concentration |
|-----|---|---|---|
| 44* | Chlorinebenzene | C_6H_5Cl | 0.001 |
| 45 | Chlorinediphenyl | | 0.0005 |
| 46 | Chlorine oxydiphonyl | | 0.001 |
| 47 | Chlorinenaphtaline (trichlorinenaphtalin) | $C_{10}H_7Cl$ | 0.005 |
| 48 | High level tetra and pentanaphtalin mixture | | |
| 49 | Chlorineropren | $CH_2=CH-CCl=OH_2$ | 0.002 |
| 50 | Chlorinepycrin | CC_3NO_2 | 20 mg/m ³ 60 mg/m ³ |
| 51* | Limestone chlorinerua (calculating as Cl) | $CaCl_2$ | 0.001 |
| 52* | Metylic spirit | CH_3OH | 0.050 |
| 53* | Dimetyl amin | $(CH_3)_2NH$ | 0.001 |
| 54 | Dimetyl focmanit | $\begin{array}{c} CH_3 \\ HCO-N < \\ CH_3 \end{array}$ | 0.001 |
| 55 | Dichlorinebenzene | $C_6H_4C_{12}$ | |
| 56 | Dinitrochlorinebenzene | $\begin{array}{c} (NO_2)_2 \\ C_6H_3 < \\ Cl \end{array}$ | 0.001 |
| 57 | Dinitrotoluen | $(NO_2)_2C_6H_3-CH_3$ | 0.001 |
| 58 | Dinitrobenzene and identicals | | |
| 59 | Dioxide Chlorine | ClO_2 | 0.0001 |
| 60* | Copper (salt) | | 0.00005 |
| 61 | Etyl mercury phosphate | | 0.00005 |
| 62* | Focmaldehyt | $HCHO$ | 0.005 |
| 63 | Etyl mercury chlorinerua | | |
| 64* | Florua hydrogen | FH | 0.0005 |
| 65 | Salt of acid flohydric (calculating as HF) | FH | 0.0005 |
| 66 | Salt of acid flohydric (calculating as HF) | | 0.001 |
| 67 | Florosilicat metal dissolved and undissolved | | |
| 68 | Hexachlorinero cychlorinehexan | | 0.00005 |
| 69* | Isome (gamma) | | |
| 70 | Hydrazin and derivatives | | 0.0001 |
| 71 | Isopropylnitrat | $C_3H_7NO_2$ | 0.005 |
| 72* | NaOH gas, KOH gas | | |
| 73* | Mangan and mangan compounds (calculating as MnO_2) | MnO_2 | 0.0003 |
| 74* | Metaldehyl | | |
| 75 | Nitrobenzene and its compounds | $C_6H_5NO_2$ | 0.005 |
| 76 | Nitrochlorinebenzene | $\begin{array}{c} Cl \\ C_6H_4 < NO_2 \end{array}$ | 0.001 |
| 77 | Nicotin | | 0.0005 |
| 78 | Metal nitrit | NO_2 | |
| 79 | Ozon | O_3 | 0.0001 |
| 80* | Oxide carbon | CO | 0.030 |
| 81* | Oxide etylen | | 0.001 |
| 82* | Oxide zinc | ZnO | 0.005 |
| 83* | Oxide nito, calculating as N_2O_5 | $N_2O, NO, NO_2, N_2O_3, N_2O_5$ | 0.005 |
| 84* | Oxide niken | NiO | 0.005 |
| 85 | Oxide iron including fluo and mangan compound | | 0.004 |
| 86 | Photpho white (sesquisulfur phesphore) | P_4 | 0.0003 |
| 87 | Photphotrichlorinerua compound | | 0.00005 |
| 88 | Photphua hydrogen | PH_3 | 0.0003 |

| No. | Name of chemicals | Formula | Concentration |
|-----|---|---|---------------|
| 89 | Photphua metal | | 0.15-0.30g |
| 90* | Photphorit (ore of under 10% free SiO ₂) | | 0.0005 |
| 91 | Photgen | COCl ₂ | 0.0005 |
| 92* | Phenol | C ₆ H ₅ OH | 0.005 |
| 93 | Photphat dietyl | C ₁₀ H ₁₄ NO ₅ PS | 0.00005 |
| 94 | Paranitropheny | | 5mg/kg |
| 95 | (Pration, thiophot) | | (insecticide) |
| 96 | Sunfur lead | PbS | 0.0005 |
| 97 | Sunfua carbon | SC ₂ | 0.010 |
| 98 | Sunfua hydrogen | H ₂ S | 0.010 |
| 99* | Tetrachlorinerua carbon | CCl ₄ | 0.050 |
| 100 | Tetrachlorineheptan | | 0.001 |
| 101 | Tetra etyl lead | Pb(C ₂ H ₅) ₄ | 0.000005 |
| 102 | Tetra nitrometan | CH ₃ (NO ₂) ₄ | 0.00003 |
| 103 | Metal mercury and mercury inorganic compound, excluding HgC12 (sublime) | Hg | 0.00001 |
| 104 | Mercury (II) | | |
| 105 | Chlorinerua (sublime) | HgCl ₂ | 0.0001 |
| 106 | Trinitro chlorinebenzene | | 0.001 |
| 107 | Trichlorineetylen | | 0.001 |
| 108 | Trichlorineetylen | C ₂ H ₃ Cl ₃ | 0.050 |
| 109 | Trinitrobenzene and its compounds | C ₆ H ₃ (NO ₂) ₃ | 0.001 |
| 110 | Toluen dihydrogenxyanat | | 0.0005 |
| 111 | Nitro Toluen | CH ₃ -C ₆ H ₄ -NO ₂ | 0.003 |
| 112 | Tetraetyl | C ₁₀ H ₂₀ N ₂ S ₄ | |

Name of Chemicals

| No. | Name of chemicals |
|-----|--|
| 1 | Phosphorus oxochloride, (10025-87-3) |
| 2 | Phosphorus trichloride, (7719-12-2) |
| 3 | Phosphorus pentachloride, (10026-13-8) |
| 4 | Trimethyl phosphite, (121-45-9) |
| 5 | Triethyl phosphite, (122-52-1) |
| 6 | Dimethyl phosphite, (868-85-9) |
| 7 | Diethyl phosphite, (762-04-9) |
| 8 | Sulfur monochloride, (10025-67-9) |
| 9 | Sulfur dichloride, (10545-99-7-0) |
| 10 | Thionyl chloride, (7719-09-7) |
| 11 | Ethyldiethanolamine, (139-87-7) |
| 12 | Methyldiethanolamine, (105-59-9) |
| 13 | Triethanolamine, (102-71-6) |
| 14 | Asen and asen compounds |
| 15 | Cyanide compounds |
| 16 | PCB (Polychlorinated biphenyls) and PCB-containing compounds |
| 17 | Mercury and mercury-containing compounds |