

WORLD TRADE ORGANIZATION

RESTRICTED

WT/ACC/VNM/29

30 October 2003

(03-5773)

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

Original: English

ACCESSION OF VIET NAM

Additional Questions and Replies

The Government of the Socialist Republic of Viet Nam has submitted the following replies to additional questions raised with the request that they be circulated to members of the Working Party.

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II. ECONOMY, ECONOMIC POLICIES AND FOREIGN TRADE

2. Economic Policies

(a) Main directions

Question 1

Dual pricing. According to the Vietnamese response, the dual-pricing mechanism is now only applied to the price of electricity and domestic airfares, and that such dual-pricing will be abolished in advance of 2005. We hope that Viet Nam will accelerate its plan for abolishment, and, further, that it will make commitments to fully abolish the dual-pricing system prior to accession.

Answer:

The dual pricing mechanism is now only applied to the price of electricity and domestic airfares. The difference between the price applied to Vietnamese residents and the price applied to foreigners has been narrowed down considerably over the past years. Viet Nam shall eliminate these dual prices by 2005 as already notified.

The implementation of this action plan shall ensure that the dual-pricing mechanism shall be abolished upon Viet Nam's accession to the WTO.

(c) Foreign exchange and payments system

Question 2

Paragraph 19 of the draft factual summary indicates that Viet Nam would completely phase out its foreign currency surrender requirements by the end of 2003. Can Viet Nam please provide an update on the current status of these requirements?

Answer:

In accordance with Decision No. 46/2003/QĐ-TTg issued on 2 April 2003 by the Prime Minister, the obligatory foreign currency-surrendering ratio applicable to current transactions of resident economic and social entities has been set at zero percent (0%).

Question 3

Paragraph 19 of the Factual Summary notes that Viet Nam will completely phase out its foreign currency surrender requirements by the end of 2003. We request Viet Nam to provide an update on progress that has been made in this area.

Answer:

In accordance with Decision No. 46/2003/QĐ-TTg issued on 2 April 2003 by the Prime Minister, the obligatory foreign currency surrendering ratio applicable to current transactions of resident economic and social entities has been set at zero percent (0 per cent).

(d) Foreign and domestic investment policies

Question 4

Investment Regime--National treatment. With regard to Paragraph 25-28 related to investment regime (or Paragraph 99 related to VAT), according to Article 60 of the Foreign Investment Regulation, the import of machinery equipment by foreign investing enterprises for the purpose of being used as fixed capital is not exempt from VAT if Viet Nam can already produce the same kind of equipment. This requirement seems to be in violation of Article 3 of the national treatment principle in GATT 1994. We therefore ask that Viet Nam uniformly exempt from VAT all machinery equipment imported for fixed asset purposes.

Answer:

According to Article 60, Decree No. 24/2000/ND-CP, equipment, machinery and specialized means of transportation which form parts of a technological line, are not yet domestically produced, and are imported to form fixed assets of FDI enterprises or to implement business co-operation contracts shall not be subject to value added tax.

In our opinion, the above regulation is not inconsistent with the National Treatment principle in Article III of GATT 1994. In this case, no comparison can be made since there is no “like domestic product”, and the application of this measure is not to afford protection to domestic production. Please note that equipment and machinery produced in Viet Nam are also subject to value added tax as imported products.

Question 5

Investment policy

- (a) We welcome Viet Nam’s efforts to simplify procedures relating to investment, and to increase transparency and the predictability of the legal and policy system, as described in the response to Question 3 of document WT/ACC/VNM/23. However, there still remain some problems, such as the necessity to go through more than 2 procedures involving different Ministries in order to carry out investment in Viet Nam, and the existence of many ambiguous matters regarding requirements and procedures. We, therefore, continue to urge Viet Nam to introduce a “one-stop” service and to make the relevant system clearer. A uniform application of an investment-related regime should also be secured throughout the entire region.**
- (b) We also consider that stock-holding companies should be allowed as one form of investment. Since Viet Nam has not yet provided a response to this question, please explain in detail Viet Nam’s position in this regard.**

Answer:

- (a)** Viet Nam has been carrying out administrative reforms towards establishing “one-stop” mechanism for foreign investments. According to Decree No. 61/2003/ND-CP issued by the Government dated 6 June 2003 specifying competence, responsibilities, authority and organisation of Ministry of Planning and Investment, Department of Foreign Investment was set up in order to uniformly administer foreign investment activities throughout the country.

On 19 March 2003, the Government issued Decree No. 27/2003/ND-CP on the amendment of and addition to some articles of Decree No. 24/2003/ ND-CP guiding the implementation of

the Law on Foreign Investment. This Decree extends the list of projects subject to registration for investment licence, narrows the list of sectors in which investment licensing is conditional, and clarifies the criteria for issuing or rejecting licence. Ministry of Planning and Investment is studying plans to further decentralize the authority to issue investment licenses to provincial people's committees and industrial zones' management boards.

Together with decentralizing the authority to grant investment licenses and to administer investment activities in order to simplify administrative procedures and lower costs for foreign investors, Viet Nam has developed close coordination among license issuing agencies to ensure the consistency of foreign investment policies.

Besides, in order to ensure the effective and uniform enforcement of the legal system, the Ministry of Planning and Investment, in cooperation with concerned Ministries and Agencies, is reviewing existing regulations aiming at abolishing those provisions, procedures and licenses which are out-dated, overlapping or impeding the operation of FDI enterprises.

- (b) On 15 April 2003, the Government of Viet Nam issued Decree No. 38/2003/ ND-CP allowing the transformation of FDI enterprises into stock-holding companies. Viet Nam is also considering a uniformly applied enterprise law governing both domestic and foreign investments with a view to creating a common legal framework regulating the establishment, organization and operation of domestic and foreign invested enterprises.

Question 6

Land policy. As the Vietnamese land regime is complicated and confusing, this has become a barrier to foreign companies when establishing a commercial presence and engaging in business. For example, problems, such as an imperfect land register system and the unclear manner for calculating land prices, have come to our attention. We request Viet Nam to improve its laws and regulations regarding land, and to make its provisions clearer. In addition, we request extension of the right to use land (i.e. for 100 years or for an indefinite period).

Answer:

In an effort to improve the investment environment, Viet Nam has continuously simplified the regulations and procedures on land usage to facilitate foreign investments. The Amended Law on Foreign Investment of 2000 allows foreign investors to mortgage the value of land use rights and the assets attached to the land in order to obtain loans from all credit institutions operating under Vietnamese laws (previously they were only allowed to mortgage with and borrow from Vietnamese credit institutions). The Amended Law also provides for the responsibilities of provincial people's committee and the Vietnamese party to the FDI enterprise in the fulfilment of site clearance compensation as well as other formalities relating to land usage.

In particular, the National Assembly of Viet Nam in June 2001 ratified the preliminary amendments to a number of Articles of the Land Law, focusing on some issues related to land rental tariff, authority to assign or to lease the land; responsibilities of the administrative authorities at different levels in making decisions relating to plans for using land and compensating tariff for recovered land. The Amended Law requires provincial people's committees to lease the land to all foreign investment projects.

In order to further improve the procedures related to land lease in the above direction, the last session of the National Assembly in 2003 will consider comprehensive amendments to the Land Law. The draft of the Amended Law is being published for public comments.

Regarding the land-lease duration, according to the existing regulations, foreign invested enterprises are allowed to lease the land in accordance with the duration of the investment projects, but not exceeding 50 years. In cases stipulated by the Standing Committee of the National Assembly, the Government may decide a longer duration of land leasing, but this duration, in all cases, should not exceed 70 years.

According to these regulations, foreign investors are free to decide on the duration of land leasing corresponding to their project's objectives and natures of operations. Investors may also apply for the extension of such duration where necessary. In our view, regulations regarding land-lease duration do not obstruct business activities. In fact, they are also applied on a non-discriminatory basis between domestic and foreign investors.

Question 7

We request Viet Nam to amend its laws governing land use rights to extend the right to use land to a period longer than that currently permitted. Would Viet Nam please advise on timetables for this legislative action?

Answer:

Regarding the land-lease duration, according to the existing regulations, foreign invested enterprises are allowed to lease the land in accordance with the duration of their investment projects, but not exceeding 50 years. In cases stipulated by the Standing Committee of the National Assembly, the Government may decide a longer duration of land leasing, but this duration, in all cases, should not exceed 70 years.

According to these regulations, foreign investors are free to decide on the duration of land leasing corresponding their project's objectives and natures of operations. Investors may also apply for the extension of such duration where necessary. In our view, regulations regarding land-lease duration do not obstruct business activities. In fact, they are also applied on a non-discriminatory basis between domestic and foreign investors.

Question 8

Paragraph 27 of the Factual Summary notes that in some sectors (for example telecommunications) investment is restricted to a Business Cooperation Contract (BCC). We are concerned with this requirement, as in a BCC the investor bears the risk without recourse to ownership of equity and management control. We request Viet Nam to advise when BCCs will be phased out in favour of more attractive investment arrangements.

Answer:

Viet Nam is prepared to discuss this issue within the framework of bilateral market access negotiations on trade in services.

Question 9

With regard to Paragraph 31 of the Factual Summary, some members consider the granting of a tax preference upon the fulfilment of an export requirement to be contrary to WTO provisions, most notably the Agreement on Subsidies and Countervailing Measures. Viet Nam, however, is not considering the abolishment of this measure. The Viet Nam Ministry of Planning and Investment announced Decree No. 718/200/QĐ-BKH, on Dec. 7, 2001, which stipulates that there are 14 categories of products, including motorized two wheeled vehicles

and audio-visual products, must guarantee to export at least 80 per cent of their products. This imposes real difficulties in the operations of these companies and affects willingness to invest, and it also has a negative impact on attracting foreign investment. We are of the view that the measure is contingent upon the domestic content regulation of TRIMs. Viet Nam is therefore requested to remove this export ratio requirement on foreign-invested companies.

Answer:

The granting of income tax preference to enterprises achieving a certain export ratio is an incentive aimed at encouraging foreign investments. As a low-income country, Viet Nam needs to attract foreign investments. As a result, Viet Nam hopes that WTO Members, on the basis of Annex VII of the Agreement of Subsidies and Countervailing Measures, give Viet Nam some flexibility to maintain this measure to achieve its development objectives. Viet Nam commits to remove this type of subsidy when the average income per capita reaches US\$1,000 per annum.

As we understand, the export ratio requirement is not covered by the TRIMs Agreement. However, in order to show goodwill in the negotiations, Viet Nam commits not to apply this requirement upon accession.

Question 10

In many sectors where Joint Ventures are permitted, foreign investment is restricted to 49 or 50 per cent for quite long time periods. We request Viet Nam to abolish the restrictions on foreign investment in these sectors (advertising services, market research services, distribution services, telecommunications and banking services). Would Viet Nam please advise on timetables for this legislative action?

Answer:

Viet Nam is prepared to discuss this issue within the framework of bilateral market access negotiations on trade in services.

Question 11

With regard to paragraphs 32 and 34 of the Factual Summary, we request Viet Nam to advise of progress being made to reform the current restrictive Mining Law. We are particularly interested to receive an update on the state of progress of amendments to the Mining Law which will provide for an investment licence to be granted at the start of the exploration stage and that the licence be effective throughout the duration of the mining process. We also request an update on reform of current unclear provisions stipulating the conditions for the export of raw materials, land tax obligations and incentives, and dispute resolution.

Answer:

In accordance with Article 52.4, Decree No 76/2000/ND-CP dated 15 December 2000 by the Government providing for detailed guidelines for the implementation of the Amended Mining Law, investment licenses granted to foreign individuals and organisations, or joint-ventures to carry out mining projects may cover exploring, exploiting and processing activities.

Viet Nam is reviewing the 7-year implementation of the Mining Law with a view to further amending this Law. In this process, we encourage and facilitate foreign investors to carry out exploring, exploiting and processing projects in Viet Nam on the basis of effective and reasonable use of natural resources, protection of the environment and ecology, preservation of historical and cultural relics,

and due consideration of other public interest. Viet Nam will respond to questions relating to conditions for the export of raw materials, land tax obligations and incentives, and dispute resolution right after the above Project is completed.

Question 12

With regard to paragraph 33 of the Factual Summary, we request Viet Nam to provide an update on progress to pass the new Construction Law.

Answer:

- The Construction Law was submitted for comments during the 3rd Meeting, Session XI of the National Assembly, and was amended and supplemented accordingly. Then it was submitted to the Standing Committee of the National Assembly for further comments.
- After being approved by the Standing Committee of the National Assembly in August 2003, the draft law would be sent to each Member of the National Assembly for comments.
- In September 2003, the draft Law would be circulated for discussion at the meeting of full time members of the National Assembly.
- The Standing Committee of the National Assembly would modify the draft Law on the basis of these comments, and then submit to the 4th meeting, Session XI of the National Assembly in October 2003.

Right after the Construction Law is passed by the National Assembly, 5 Decrees will be issued to provide guidelines for implementation of the Law. These are: a decree on the administration of planning activities, a decree on the qualifications to engage in construction activities, a decree on the management of construction investment projects, a decree on construction tendering, and a decree on managing the quality of construction works.

Question 13

With regard to paragraph 33 of the Factual Summary, we request Viet Nam to issue a clear policy statement indicating where private (including foreign) participation in infrastructure projects is encouraged.

Answer:

The Government of Viet Nam plans to mobilise all resources (including private investments from domestic and foreign sources) to develop the infrastructures. According to Article 3 of the Law on Foreign Investment and Decree No. 24/2000/ND-CP dated 31 July 2000, infrastructure development projects are listed as encouraged investment projects, and infrastructure development projects in the form of BOT, BTO and BT are subject to the list of specially encouraged investment projects.

In order to provide more detailed guidance and to set up a favourable legal framework for encouragement of infrastructure development investments, the Government of Viet Nam issued Decree No. 62/1998/ND-CP dated 15 August 1998 providing guidelines on foreign investment in the forms of BOT, BTO and BT. A similar mechanism applied to domestic investments is also being developed to regulate the encouragement of domestic investments. According to these regulations, BOT, BTO and BT projects are entitled to enjoy corporate income tax at the most favourable rates, exempted from land rent, supported to meet foreign exchange requirement, and exempted from import duties applied on inputs and raw materials for the implementation of the projects.

Question 14

With regard to paragraph 33 of the Factual Summary, we request Viet Nam to provide information on its tendering process, including how these are made open to tenderers, and how Viet Nam ensures the tender process is fair and transparent. We request information on the criteria used in tender-related decision making and the relevant agencies responsible for taking this decision. We request Viet Nam to provide all the relevant rules, regulations and laws governing the tender process in Viet Nam.

Answer:

Regarding the information on tendering process, Viet Nam provides herewith the unofficial translation of the 3 following legal documents (i) Decree No. 88/1999/ND-CP issued by the Government on 1 September 1999 providing for tendering regulations; (ii) Decree No. 14/2000/ND-CP, 5 May 2000 which amended Decree No. 88/1999/ND-CP; (iii) Decree No. 66/2003/ND-CP dated 12 June 2003 which amended the two above-mentioned Decrees.

The criteria for selecting tenderers are stipulated in a concrete and transparent manner in the above-mentioned documents. Currently, the draft Ordinance on Tendering is being completed. Compared with the current regulations on tendering, this draft Ordinance has some new provisions making procurement process more transparent:

- In most cases, procurements should be made by the open tendering process. The procuring agency should publish the terms and conditions as well as timing of the tender in the Procurement Gazette.
- All information relating to the tender should also be made public through the Procurement Gazette, including:
 - The tender invitation;
 - The list of tenderers participating in a limited tendering proceeding;
 - The results of selection of tenderers;
 - The list of contractors who are unqualified to participate in the tender for violating the Ordinance on Tendering;
 - List of contractors who have been forced to terminate the contract before the expiry date, or who have been unable to fulfil the signed contract.

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

Question 15

We encourage Viet Nam to continue with its public sector reform process. These reforms will assist Viet Nam's accession to the WTO and foster greater trade facilitation. We seek a report on developments so far and intended future action. We request that, in addition to this information, Viet Nam provides to the Working Party information on reforms with respect to:

- **Communication and cohesion between ministries; and**
- **Management of public information.**

Answer:

Viet Nam takes note of these comments. The public administration reforms have been undertaken since 1990. The Government's commitment to reforms has been further confirmed by the issuance of the Public Administration Reform Master Plan for the period 2001-2010 in 4 key areas: institutional reform, organizational reform, human resource development and public financial reform.

1. Recent progresses in public administrative reforms:

- With respect to institutional reform, a range of important legal documents have been promulgated, creating a level playing field for enterprises. New regulations have made fundamental changes in the operation and performance of state agencies, making them more responsible to the individuals and organisations they serve and reducing their intervention in enterprises' activities.
- With respect to organizational reform, there have been important changes in functions and mandates of the Government, ministries and local administrative authorities in consistence with the new economic mechanism.
- With respect to human resources development, reforms mainly focus on capacity building for civil servants nationwide and the mechanism for managing civil servants.
- With respect to public financial reform, the State Budget Law has been adopted. The Law clarifies the authority of the 4 levels of governments: central, provincial, district and commune level.

2. Future public administrative reform priorities:

- Preparation and implementation of the proposal on division of competence between central to local governments;
- Implementation of the Civil Service Ordinance (amended);
- Application of the "one-stop" mechanism nationwide;
- Training and upgrading for capacity building for civil servants.

3. Coordination and information exchange among ministries:

Coordination and information exchange among ministries are undertaken through:

- Regular information exchange and consultation;
- The Official Gazette;
- The statistics provided by the General Statistical Department and the reports of the Government;
- Monthly Government's meeting of the Cabinet;
- Direct meetings and discussions between ministries;
- The wide area network (WAN) of the Government administered by the Office of the Government (the CP Net);
- The Websites maintained by ministries, government agencies and provincial authorities.

4. Management of public information

Management of public information in Viet Nam is undertaken as follows:

- The General Statistics Department is responsible for announcing and providing official data of Viet Nam;
- The Office of the Government is responsible for maintaining the Official Gazette and the WAN of the Government ;

- The Ministry of Culture and Information is responsible for the overall state management of information;
- Ministries and People's Committees are responsible for management of their own websites.

Question 16

We note that the existence of many conflicting laws in Viet Nam makes interpretation subjective and enforcement complicated. We request Viet Nam to provide information on when Viet Nam is likely to move from a "positive" to a "negative" list approach so that activities are permitted unless expressly prohibited by law. We also request Viet Nam to advise likely timetables for Viet Nam to make laws self-enforcing, so that implementation is limited to punishment of violators instead of everyone having to demonstrate positive compliance.

Answer:

The observation that there are many conflicting laws in Viet Nam is not accurate, especially when referring to those legal documents issued by the National Assembly or the Standing Committee of the National Assembly in the field of international trade. However, in a few cases, there are different in the level of details in the guiding documents that may lead to the impression that there are conflicting legal documents.

Viet Nam takes note of the proposal relating to the movement from a "positive" to a "negative" list approach when specifying acts not allowed by the laws. In reality, Viet Nam has been conducting reforms in the area of trade and economic legislation in such direction. For example, as stipulated in the Article 57 of the Constitution, Vietnamese citizens have the right to freely conduct business in accordance with the laws. The Commercial Law, the Enterprise Law and a number of other legal documents also follow the same approach.

The Decree No. 44/2001/CP dated 2 August 2001 on the amendment of and addition to a number of articles of Decree No. 57/CP dated 31 July 1998 which provides guidelines for implementation of the Commercial Law regarding import-export activities, sub-contract processing and acting as agents for foreigners specifies that: "All goods, except for those subject to the list of import-export prohibition, may be imported or exported".

- Article 26 of the amended Law on Promulgation of Legal Documents stipulates that "The drafting committee of a law, ordinance or resolution is also in charge of drafting the legal documents guiding the implementation of that draft law, ordinance or resolution".

Article 15.3 of Decree No. 101/CP dated 23 September 1997 by the Government providing guidelines for implementing a number of articles of the Law on Promulgation of Legal Documents stipulates that:

"Draft legal document should be of such high quality that the provisions contained in each article should be readily understandable so that it can be enforced immediately after the legal document comes into effect.

Where guiding documents are necessary for implementing a legal document which is being drafted, the drafting committee has the responsibility to draft, or to direct and supervise the government agencies involved to draft, the guiding documents so that they can be submitted to the Government at the same time with the draft legal document (i.e., the draft law, ordinance, resolutions, decrees, etc.)".

The last part of the question is the subject of criminal law, not international trade law. The “presumption of innocence” principle is still an important one in the Criminal Code when applying arbitration or penalties on violators.

Question 17

We request Viet Nam to provide information on when it will speed up the process of issuing implementing guidelines to accompany relevant laws? We also request Viet Nam to advise what steps are being made to increase opportunities for consultation (with foreign and domestic investors) before the passage of laws.

Answer:

With respect to speeding up the procedures of promulgating legal documents:

Viet Nam has made considerable progresses in speeding up the procedures of promulgating legal documents, allowing legal documents to be enforceable right after they come into effect. Article 9 of the amended Law on Promulgation of Legal Documents stipulates that: “legal documents issued to amend, supplement, replace, or invalidate the enforcement of other legal documents have to clearly specify the names of such documents, articles or provisions of such documents which are subject to amendment, supplement, replacement, or cancellation”. Furthermore, Article 26 of this Law stipulates that “The drafting committee of a law, ordinance or resolution is also in charge of drafting the legal documents guiding the implementation of that draft law, ordinance or resolution”.

Article 15.3 of Decree No. 101/CP dated 23 September 1997 by the Government providing guidelines for implementing a number of articles of the Law on Promulgation of Legal Documents stipulates that:

“Draft legal document should be of such high quality that the provisions contained in each article should be readily understandable so that it can be enforced immediately after the legal document comes into effect.

Where guiding documents are necessary for implementing a legal document which is being drafted, the drafting committee has the responsibility to draft, or to direct and supervise the government agencies involved to draft, the guiding documents so that they can be submitted to the Government at the same time with the draft legal document (i.e., the draft law, ordinance, resolutions, decrees, etc.)”.

Regarding consultation with domestic and foreign investors before issuing a legal document, Viet Nam has adopted this approach since the entry into force of the Law on Foreign Investment in 1987. In addition, the Government of Viet Nam and the World Bank have been the co-Chairs of the Business Forum for almost 10 years in order to listen to the comments and concerns of domestic and foreign investors (meetings for this purpose are held every 3 to 6 months). Article 3 of the amended Law on Promulgation of Legal Documents also provides that government agencies involved in the drafting of legal documents have the responsibility to offer individuals and organisations the opportunity to comment on the legal document and to consider and take into account their comments.

5. Laws and Legal Acts

Question 18

Ensuring a uniform application of laws

- (a) **With regard to Viet Nam's response to Question 9 of document WT/ACC/VNM/23, please provide answers in detail with reference to the recent developments in Viet Nam and to the questions described in the first four tirets, since there is no clear explanation to these questions.**
- (b) **With regard to Viet Nam's response to the 5th tiret of this question, we note that civil cases have always been under the authority of the Civil Court. In this connection, we would like to obtain Viet Nam's confirmation that the Civil Court is in charge of not only giving civil judgement but also executing the given judgement. Should this not be the case, we believe that the Civil Court should have the authority to execute its judgement.**
- (c) **With regard to the settlement of economic disputes, we continue to request extension of the period during which a person can file a suit, from 6 months to 2 years after such a dispute occurs, in line with international commercial practices.**

Answer:

- a. We are sorry that the full answer to the question has not been received. We would like to answer that question again as follows:
- For the first paragraph (regarding procedures for public comments as provided in the Law on the Amendment of and Addition to Some Articles of the Law on Promulgation of Legal Documents):

The Law on the Amendment of and Addition to Some Articles of the Law on Promulgation of Legal Documents (the amended Law) was approved on 16 December 2002 by the National Assembly. To ensure the transparency right from the drafting stage of legal documents, the amended Law has added a number of provisions which require the responsible agencies to seek public comments, especially the comments of those directly affected, on the draft legal documents (Article 1.2 of the Amended Law). With a view to seeking comments from a wider public, Article 1.19 of the amended Law provides that the Office of the Government publish the drafted resolutions and decrees on the mass media and the Internet for the public to make comments.

- For the second paragraph (with regard to the correcting the existing discrepancies among various laws and regulations):

Viet Nam has made every effort to identify and correct the discrepancies among its laws and regulations. To ensure the consistency of the legal system, the amended Law has provided a clear provision that:

“the authority issuing the new legal document shall provide therein a list of those previous articles, provisions or legal documents which conflict with the newly issued document and amend or supplement such conflicting articles, provisions or documents as required”.

- For the third paragraph (on the consultation and interpretation of legal documents by relevant government agencies and people's committees):

According to the Law on Promulgation of Legal Documents, the Standing Committee of the National Assembly is the sole State body with the authority to interpret laws and ordinances.

The Decree No 94/CP dated 06/09/1997 on legal departments in ministries and other governmental agencies provides that legal departments shall be set up in such ministries and agencies to help ministers and heads of agencies, to exercise the rule of law within their auspices; to draft legal documents; to evaluate, review, and systemise the legal documents; and to disseminate and supervise the implementation of legal documents.

- For the 4th paragraph (on publication of legal documents on the Official Gazette):

With regard to publication of legal documents in the Government Gazette, Viet Nam on average issues 3 to 4 volumes of Government Gazettes per month.

The Amended Law also provides for the effective dates for each type of legal documents to ensure that no legal documents shall come into effect prior to publication.

- b. The Civil Court, which is part of the people's court system, is functioned to make judgements on civil cases. However, it is not the agency responsible for executing judgements and decisions on civil cases. Executing bodies from central to local levels are under the uniform administration of the Ministry of Justice. The organization of this system is the matter of internal affair, not having any direct impact on international trade.
- c. Regarding the period for prosecuting an economic dispute, Article 31.1 of the Ordinance on Procedures for Settlement of Economic Disputes (which was formulated based on the recommendations of various international experts) stipulates that within 6 months from the date on which the economic dispute in question arises, the complainant is required to file the suit by submitting a written request to the Court. The recent recommendation of Japanese experts, i.e. to extend this period to 2 years, has been taken into accounts by the drafting committee for the amended Ordinance on Procedures for Settlement of Economic Disputes. It is expected that this provision in the amended Ordinance as well as in the Code for Prosecution of Civil Cases will be amended so that the period for prosecuting a civil case can be extended from 6 months to 2 years.

IV. POLICIES AFFECTING TRADE IN GOODS

Question 19

Viet Nam's replies in Questions 12 and 13 of WT/ACC/VNM/23, which concern trading rights, refer us to Question 4, which pertains to labour regulations. We reiterate these questions and request responses:

- **The reply to question 12 of WT/ACC/VNM/16 states that Viet Nam will table its plan for eliminating its import registration regime will be asymmetrical import registration requirements for firms as part of its NTM elimination schedule in its accession negotiations. Viet Nam's current import registration regime discriminates against foreign invested enterprises and a violation of the GATT Article III on national treatment for trade in goods and Article XI. National treatment is a basic principal of the WTO with which all members must comply. Please provide more details on how Viet Nam intends to bring this system into compliance with WTO rules.**

- **We seek confirmation from Viet Nam that upon accession a non-discriminatory import registration regime will be in place that allows both domestic and foreign-invested entities to import inputs, import items for resale, and to export without any restriction, other than restrictions consistent with WTO provisions.**

Paragraph 70 of the factual summary, and Viet Nam's replies to questions 10, 11 and 14 of WT/ACC/VNM/23 present a major problem concerning national treatment in trading rights. Foreign-invested firms clearly face restrictions in importing and exporting that domestic firms do not face. What is the basis of Viet Nam's claim that "such regulation does not violate the "national treatment" obligation (of GATT Article III)?

We continue to seek confirmation from Viet Nam that upon accession a nondiscriminatory import registration regime will be in place that allows both domestic and foreign invested entities to import inputs, import items for resale, and to export without any restriction, other than restrictions consistent with GATT Articles XX and XXI.

We request that Viet Nam confirm whether and how a foreign individual or firm, which has not invested or established a commercial presence in Viet Nam, may act as the importer of record for goods made available for distribution in Viet Nam.

Answer:

Viet Nam confirms that foreign invested enterprises are entitled to export as Vietnamese enterprises. Foreign invested enterprises are also allowed to import all types of goods consistent with their investment licenses.

The importation of goods inconsistent with the investment licenses (i.e., importation for resale) is a matter relating to distribution services. In Viet Nam's view, it should, therefore, be discussed in the context of bilateral negotiations on market access regarding distribution services.

Question 20

Important questions have previously been raised relating to the rights to import, import for resale and export accorded to foreign-invested firms. We note that foreign-invested enterprises in Viet Nam face restrictions on importing and exporting that national firms do not face. This is in breach of the national treatment requirement in GATT Article III and is not consistent with GATT Articles XX and XXI. This matter was raised in questions 11 and 12 of WT/ACC/VNM/16. In response, Viet Nam indicated that it would "deal with this issue when tabling the elimination schedule of existing non-tariff barriers in WTO accession negotiations". We request Viet Nam to advise what progress is being made with this, and when it will be ready to table proposals. We urge Viet Nam to address this issue immediately in order that it can eliminate all discriminatory import licensing procedures before accession.

Answer:

Viet Nam confirms that foreign invested enterprises are entitled to export as Vietnamese enterprises. Foreign invested enterprises are also allowed to import all types of goods consistent with their investment licenses.

The importation of goods inconsistent with the investment licenses (i.e., importation for resale) is a matter relating to distribution services. In Viet Nam's view, it should, therefore, be discussed in the context of bilateral negotiations on market access regarding distribution services.

Question 21

Under the current system foreign-invested firms do not have the same rights to import, import for resale, or export as domestic firms. As a result, imported goods do not benefit from the National Treatment Requirements of GATT Article III and the system could also be seen as a non-tariff barrier to imports prohibited by GATT Article XI. At the last Working Party meeting, although Viet Nam acknowledged that the current regime violated national treatment it reiterated that it was in the process of "transition" and that it would need to maintain the differences. We reiterate that this is an issue Viet Nam needs to begin to address now so that the discrimination can be eliminated prior to or by the time it accedes to the WTO.

Answer:

Viet Nam confirms that foreign invested enterprises are entitled to export as Vietnamese enterprises. Foreign invested enterprises are also allowed to import all types of goods consistent with the stipulations in their investment licenses.

The importation of goods inconsistent with the investment licenses (i.e., importation for resale) is a matter relating to distribution services. In Viet Nam's view, it should, therefore, be discussed in the context of bilateral negotiations on market access regarding distribution services.

Question 22

Trading rights. With regard to Paragraph 72 of the Factual Summary, branches of foreign traders were allowed to purchase certain goods for export. These branches were also permitted to import certain goods for sale in the Vietnamese market. We suggest that Viet Nam gradually broaden the range of merchandise and business categories permitted to foreign company branches operating in Viet Nam, and to publish as soon as possible its more open regulations concerning import and export business for foreign enterprises.

Answer:

Viet Nam confirms that foreign invested enterprises are entitled to export as Vietnamese enterprises. Foreign invested enterprises are also allowed to import all types of goods consistent with the stipulations in their investment licenses.

The importation of goods inconsistent with the investment licenses (i.e., importation for resale) is a matter relating to distribution services. In Viet Nam's view, it should, therefore, be discussed in the context of bilateral negotiations on market access regarding distribution services.

Question 23

Trading rights. As Viet Nam has severely restricted the trade activities of enterprises with foreign capital, these trade activities are extremely limited in comparison to those of the Vietnamese enterprises. For example, enterprises with foreign capital are only allowed to import goods in very limited cases, such as for goods used for the manufacturing process. Since such action is against national treatment, we request Viet Nam to improve its system. As this issue is closely related to the distribution area, Viet Nam is requested to carry out the liberalization of imports and sales by a foreign firm.

Answer:

Viet Nam confirms that foreign invested enterprises are entitled to export as Vietnamese enterprises. Foreign invested enterprises are also allowed to import all types of goods consistent with the stipulations in their investment licenses.

The importation of goods inconsistent with the investment licenses (i.e., importation for resale) is a matter relating to distribution services. In Viet Nam's view, it should, therefore, be discussed in the context of bilateral negotiations on market access regarding distribution services.

1. Import Regulation

(b) Characteristics of national tariff

Question 24

We thank Viet Nam for its response to questions 15 and 16 in document VNM 23, which confirm that Viet Nam has harmonized its tariff nomenclature with the Asean Harmonized Tariff Nomenclature (AHTN) and that it will be implemented by 1 July of this year. We request that Viet Nam clarify the statement " Viet Nam's current tariff nomenclature is basically in full compliance with the HS96 nomenclature at the 6-digit level." In what area's is it not in compliance?

We understand Viet Nam intends to harmonize at the 8-digit level concurrent with other Asean members. What is the current target date for harmonizing the AHTN at the 9-digit level?

We request a response from Viet Nam to the following questions, which we raised at the previous Working Party meeting.

In WT/ACC/VNM/2, the Memorandum on the Foreign Trade Regime, Viet Nam stated that its current rates of duty were basically established by Decision No. 280/TTg dated 25 April 1994, with "some adjustment and modification" made "in response to changes in international and domestic markets with a view to giving guidance on consumption and developing fair competition," and that "tariff rates range from 60 per cent to 0 per cent."

Does Decision No. 280/TTg still basically govern Viet Nam's tariff structure, or has there been a significant revision? Please indicate what changes have been made, and provide a copy of Viet Nam's current applied tariff rates.

Please describe your procedures for "analyzing international and domestic markets. Please describe the circumstances under which Viet Nam would need to "give guidance on consumption."

In particular, is Decision No. 280/TTg still valid? Was it revised or replaced as part of the Asean harmonization exercise?

We thank Viet Nam for its revised goods offer in document WT/ACC/SPEC/VNM/1/rev.1, and we would like to confirm whether column 3, "Current Statutory Applied Ceiling Rate" refers to the current applied rate, or some legal maximum. If it is not the current applied rates, we wish to renew our request for Viet Nam's current applied tariff rates. It is necessary to see these rates to understand Viet Nam's tariff regime. We have also reached the point in market access discussions where we must have these applied rates to proceed further.

Answer:

- As notified at the 6th Meeting of the Working Party, Viet Nam has issued a new import duty nomenclature, which has been provided to the Working Party before its 7th Meeting;
- The new nomenclature was constructed on the basis of ASEAN Harmonized Tariff Nomenclature (AHTN) and fully consistent with HS 2002. AHTN was constructed at 8-digit level. Up to now, the harmonization of AHTN at 9-digit level has not been considered.
- The new preferential tariff nomenclature (based on AHTN) was issued by virtue of Decision No. 110/2003/QD/BTC dated 25 July 2003.
- Decision No. 280/QD/TTg dated 25 April 1994 has been invalid since 1 January 1999. Decision No. 110/2003/QD/BTC dated 25 July 2003 promulgating the preferential tariff nomenclature has replaced the previous legal documents governing the same issues. Therefore, the provisions of Decision No 280/QD/TTg as mentioned in the question are no longer valid.
- The third column in the revised goods offer (document WT/ACC/SPEC/VNM/1/Rev.1) contains the maximum tariff rates that could be applied within the tariff bands stipulated by the National Assembly. They are not the current applied rates. The MFN tariff nomenclature with current applied rates as mentioned above has been provided to the Working Party before the 7th Meeting of the Working Party.

Question 25

Viet Nam has still to submit its current Customs Tariff and Import Statistics for recent years, by trading partner, and we encourage Viet Nam to provide these to the Working Party. Provision of this material, in electronic format if possible, would assist in the tariff negotiations.

Answer:

Viet Nam has provided import statistics to the Working Party before its 6th Meeting. The currently applied MFN tariff nomenclature, or “current customs tariff”, has been provided to the WTO Secretariat for reference together with these answers (see notice circulated in document WT/ACC/VNM/28/Add.1).

Question 26

We note that the system under which variations are made to Viet Nam's applied tariff is a disincentive to trade and investment, and has similar effects to non-tariff barriers. We understand that applied tariffs can be raised or lowered at any time within broad bands set by Viet Nam's National Assembly without public notice, and that in practice this authority to alter tariff rates is exercised by the Ministry of Finance. We anticipate receiving Viet Nam's schedule of current applied tariffs in July 2003, as promised during the Sixth Working Party meeting. We request Viet Nam to:

- **Publish its tariff rates on a regular basis, prior to their application, in accordance with Article X of the GATT;**
- **Set out in laws or regulations a definite procedure and process for determining changes in tariff rates; and**

- **Institute a process for public consultation and comment prior to amending tariff rates.**

Answer:

We understand that frequent changes to the tariff rates may limit the stability of the tariff policy and affect business plans of the business community. However, the import tariff regime of Viet Nam, similar to policies in other areas, is still in formulation and development as the national economy is making its transition toward a market economy. As a result, it is difficult to fix the applied tariffs at certain rates at this stage. Viet Nam guarantees that best efforts will be made to publish the rates prior to application and to stabilize tariff rates.

Under the current rules, changes to the import tariff rates within the tariff bands stipulated by the National Assembly is within the authority of the Ministry of Finance. However, this decision is made on the basis of consultations with the business community and the concerned ministries or agencies, hence it is not a subjective decision.

The transparency in the enactment procedures of legal documents, the publication of legal documents, the validity of legal documents, the provision of legal information as well as the publication of import and export tariff rates have been ensured by the Law on Promulgation of Legal Documents (as amended on 16 December 2002). Under this amended Law, legal documents are required to be published in the Official Gazette and only become effective 15 days thereafter, or at a later date if otherwise specified.

Viet Nam is making efforts to reform its import-export tariff system to make it more simplified and transparent. The application of WTO relevant standards are considered as the objectives in this process.

Question 27

We are concerned that Viet Nam does not provide full MFN treatment for all products. Instead of eliminating non-MFN treatment as Viet Nam prepares for WTO membership this practice is increasing e.g. the recent changes affecting wines, spirits and ceramic tiles. When will Viet Nam eliminate such discrimination?

Answer:

The removal of minimum customs valuation for wines, spirits and ceramic tiles imported from the EU is an exception under the bilateral textile and clothing agreement between Viet Nam and the EU. This preferential provision, together with some other provisions of such agreement, was offered in exchange for preferential treatment that the EU applies to Vietnamese textile and clothing products exported to the EU.

However, all issues pertaining to trade in textiles and clothing, including the above mentioned issues, will be considered in the context of bilateral market access negotiations with each interested Member with a view to reaching mutually beneficial agreement and in compliance with the WTO Agreement on Textiles and Clothing.

Question 28

For many tariff lines Viet Nam is seeking the ability to convert ad valorem duties into specific duties in the future (WT/ACC/SPEC/VNM/1/Rev.1). We are concerned that this could mean that the value of Viet Nam's tariff concessions will be affected in the future, reducing both the

security and transparency of Viet Nam's tariffs. If Viet Nam's proposal is to be considered, Viet Nam needs to provide:

- (a) More information on the need for such conversions;**
- (b) An explanation of why GATT Article XXVIII processes are not adequate should tariff concessions need to be modified in the future; and**
- (c) An explanation of the methodology that Viet Nam proposes to use to undertake such conversions.**

Answer:

The reason that Viet Nam may have to apply specific duties in the future arises from the fact that there are many incidents of trade frauds, especially understating prices of high-value goods for invading import duties. Specific duties may be necessary in the context that Vietnamese customs staffs have limited assessment and valuation capacity.

- (c) Tariff quotas, tariff exemptions**

Question 29

We request Viet Nam to provide details of the tariff quota arrangements that it proposes for salt of 2501 (i.e. volumes, tariff levels, administration arrangements). Is it proposed that the tariff quota will replace the quota and licensing arrangements, and that the latter two arrangements will be terminated?

Answer:

The application of tariff rate quotas is a consequential step in the process of eliminating non-tariff measures previously applied on the same products, including licenses and import quotas.

Detailed information relating to tariff rate quotas applied to salt (HS 2501) has been submitted to the WTO Secretariat together with this document.

Question 30

We strongly urge Viet Nam to move to a tariff-only regime and not to seek recourse to tariff quotas. We have strong concerns with the number of tariff quota commitments that Viet Nam is proposing and request Viet Nam to reconsider and reduce its tariff quota proposals. If any tariff quota commitments are to be negotiated, we request Viet Nam to provide to the membership in each case:

- (a) full details of tariff quota arrangements that are currently in force;**
- (b) the tariff rates that will apply to imports outside of the tariff quota, as well as the tariff rates to apply to imports inside the tariff quota;**
- (c) details of tariff quota volumes that are proposed;**
- (d) details of the annual growth rate in tariff quota volumes proposed by Viet Nam;**
- (e) supporting information on production, consumption and imports of each product for which tariff quota commitments are proposed; and**
- (f) guarantees that tariff quota access will be made available to all WTO members on a basis that involves no discrimination on the source of imports.**

Answer:

Detailed information relating to tariff rate quotas as requested has been submitted to the WTO Secretariat together with this document. As compared to the last version of offer on tariff rate quotas, the number of proposed categories at HS 6-digit level has been reduced from 47 to only 13. Viet Nam hopes that Members of the Working Party take note of this effort.

Question 31

As noted above, we are concerned that Viet Nam is proposing to introduce tariff quotas for a range of products. We do not believe that these tariff quotas are necessary or justified. However, administration of such tariff quotas needs to be conducted in a manner that is simple, transparent, timely, predictable, uniform, non-discriminatory, and non-trade restrictive. Tariff quotas need also to be administered in a way that does not cause trade distortions, and in a way that is not more administratively burdensome than absolutely necessary.

We request that Viet Nam provide details on its current and proposed methods for administration of each tariff quota so that this aspect of the negotiations can be discussed further.

Answer:

Viet Nam takes note of the comments relating to the application of tariff rate quotas. The application of tariff rate quotas is a consequential step in the process of eliminating non-tariff measures previously applied on the same products, including licenses and import quotas.

Detailed information related to tariff rate quotas applied to salt (HS 2501) has been submitted to the WTO Secretariat.

Question 32

We are also concerned that Viet Nam recently announced that beginning 1 July 2003 it will impose quotas on cotton (HS 5201-5203), tobacco (HS 2401) and salt (HS2501), and that from 2004 quotas will also be extended to certain dairy products (HS 0401, 0402), eggs (HS 0407) and maize (HS 1005). Can Viet Nam please advise whether these measures are tariff rate quotas (TRQs) or import quotas? Would Viet Nam please provide full details of all the "quotas" including quota volumes, tariff levels, and administration and allocation methods?

Answer:

“Quota” referred to in the question is tariff rate quota applied in place of quantitative restrictions previously applied to the same products which include license and import quotas. Detailed information has been submitted to the WTO Secretariat together with this document.

Question 33

Viet Nam states (at para 89) that it does not currently use TRQs, but that it reserves that right to use them. In their revised goods offer, TRQs (and other measures) are used in a number of agricultural goods. This would be of course would be contrary to the “standstill” principle. Also TRQs are an outmoded and trade distorting methodology. We ask that Viet Nam refrain from using such measures

Answer:

Viet Nam proposed to apply tariff rate quotas in place of quantitative restrictions, especially import prohibition, previously applied to a number of products. The purpose of this is to increase market access for imported goods in the context of WTO accession.

As indicated in the revised offer on tariff rate quotas, Viet Nam has tried its best to limit the list of goods proposed for application of tariff rate quotas. As compared to the last offer on tariff rate quotas, the number of proposed categories at HS 6-digit level has been reduced from 47 to only 13. Viet Nam will apply tariff rate quotas in compliance with WTO provisions.

(d) Other duties and charges**Question 34**

We acknowledge Viet Nam's response to question 21 of VNM 23, in which Viet Nam states that it needs to use ODCs as it rationalizes its export-import tariff structure and rates, and we will be interested in discussing ODCs bilaterally, if necessary. At this point, we simply wish to state that in the interests of transparency, Viet Nam should make its current tariff structure and tariff rates known to the working party, with a view to concluding the process of rationalizing the structure and rates as soon as possible. If ODCs are an interim measure, Viet Nam should eliminate them in its final tariff schedule.

Answer:

Up to now, Viet Nam still maintains ODCs to a number of goods in order to replace non-tariff measures previously applied to these goods. (The list of ODCs has been provided to Members of the Working Party. Please refer to Table 1.a of the Factual Summary provided to the 6th Meeting of the Working Party).

Viet Nam has tried its best to convert these ODCs into import tariff rates so that the management of tariff collection at customs border becomes more simple and transparent. We wish to reach agreement with interested Members when we discuss the binding levels of certain tariff lines that are currently subject to ODCs in the context of bilateral negotiations.

Question 35

Viet Nam currently applies other duties and charges (ODCs) on a limited number of products (paragraph 86). It is our expectation that, in the interests of transparency and clarity in their customs tariff, Viet Nam will bind other duties and charges at zero upon accession.

Further to this Viet Nam appears to have claimed the right to apply additional ODCs in the future. This would be contrary to the standstill principle, under which new trade distorting measures should not be introduced during the accession process. Furthermore, Article II of the GATT precludes the introduction of any new duties and charges after accession. Consequently ODCs not currently applied MUST be bound at zero.

Answer:

Up to now, Viet Nam still maintains ODCs to a number of goods in order to replace non-tariff measures previously applied to these goods. (The list of ODCs has been provided to Members of the Working Party. Please refer to Table 1.a of the Factual Summary provided to the 6th Meeting of the Working Party). Viet Nam has tried its best to convert these ODCs into import tariff rates so that the

management of tariff collection at customs border becomes more simple and transparent. We wish to reach agreement with interested Members when we discuss the binding levels of certain tariff lines that are currently subject to ODCs in the context of bilateral negotiations.

Under Viet Nam's commitments in the framework of the extended structural adjustment program with IMF and the Myazawa financial program to enhance transparency of trade policies, Viet Nam has gradually eliminated non-tariff measures which are import - restrictive since 2000. In the transitional period, these measures have been replaced by import duties and surcharges. Therefore, since 2000, surcharges (a form of ODCs) have been applied for the purpose of tariffication of non-tariff measures, not for the purpose of price stabilisation as in the case of Stabilisation Fund described in paragraph 84 of the Factual Summary. As indicated in Table 1.a of the Factual Summary, most of these ODCs listed in this Table have been in effect since 2000, only some have been applied since 2002.

Question 36

Viet Nam is claiming a right to maintain other duties and charges (ODCs) on a number of tariff lines. Article II:1(b) of the GATT requires that such ODCs be bound at the level at which they are currently actually applied. If there are no ODCs actually applied, ODCs must be bound at zero. We request Viet Nam to provide a comprehensive list of ODCs that are currently actually applied to imports so that we can assess this aspect of Viet Nam's tariff offer.

Viet Nam applies "differential price surcharges" on certain imported goods (para 84 and Table 1(a) of Factual Summary refer). We note that there is no fixed list of goods to which these surcharges apply and it appears they are levied on certain goods where there are significant fluctuations in the difference between domestic and world market prices. Are the surcharges variable levies? We request Viet Nam to explain fully how the surcharge system operates. The goods and rates listed in Table 1(a) are those that applied in 2000. We request Viet Nam to advise if the goods or rates have changed and, if so, how? Other duties and charges will be bound according to GATT Article II:(b) and cannot therefore be varied without due regard to the bound rates. We request Viet Nam to advise how these surcharges will be consistent with Article II.

Answer:

- a. Up to now, Viet Nam still maintains ODCs to a number of goods in order to replace non-tariff measures previously applied to these goods. (The list of ODCs has been provided to Members of the Working Party. Please refer to Table 1.a of the Factual Summary provided to the 6th Meeting of the Working Party).

Viet Nam has tried its best to convert these ODCs into import tariff rates so that the management of tariff collection at customs border becomes more simple and transparent. We wish to reach agreement with interested Members when we discuss the binding levels of certain tariff lines that are currently subject to ODCs in the context of bilateral negotiations.

- b. Under Viet Nam's commitments in the framework of the extended structural adjustment program with IMF and Myazawa financial program to enhance transparency of trade policies, Viet Nam has gradually eliminated non-tariff measures which are import- restrictive since 2000. In the transitional period, these measures have been replaced by import duties and surcharges. Therefore, since 2000, surcharges (a form of ODCs) have been applied for the purpose of tariffication of non-tariff measures, not for the purpose of price stabilisation as in the case of Stabilisation Fund described in paragraph 84 of the Factual Summary.

As indicated in Table 1.a of the Factual Summary, most of these ODCs listed in this Table have been in effect since 2000, only some have been applied since 2002.

Question 37

Would Viet Nam please provide information to explain the basis for other duties and charges of a type covered by GATT Article II:1 imposed on cement clinkers, ceramics, paper and steel, as well as the level at which these charges are currently imposed?

Answer:

Under Viet Nam's commitments in the framework of the extended structural adjustment program with IMF and Myazawa financial program to enhance transparency of trade policies, Viet Nam has gradually eliminated non-tariff measures which are import- restrictive since 2000. In the transitional period, these measures have been replaced by import duties and surcharges. Therefore, since 2000, surcharges (a form of ODCs) have been applied for the purpose of tariffication of non-tariff measures, not for the purpose of price stabilisation as in the case of Stabilisation Fund described in paragraph 84 of the Factual Summary.

As indicated in Table 1.a of the Factual Summary, most of these ODCs listed in this Table have been in effect since 2000, only some have been applied since 2002.

(e) Quantitative import restrictions

Question 38

Viet Nam also appears to use a discretionary licensing system that limits the sectors and types of activity allowed. For example, foreign enterprises are unable to import freely certain goods for domestic distribution and any importation being dependent upon the terms of their investment license (para 70-74), which may be more onerous than on their domestic counterparts.

Answer:

Viet Nam confirms that foreign invested enterprises are entitled to export as Vietnamese enterprises. Foreign invested enterprises are also allowed to import all types of goods consistent with their investment licenses.

The importation of goods inconsistent with the investment licenses (i.e. importation for resale) is a matter relating to distribution services. In Viet Nam's view, it should, therefore, be discussed in the context of bilateral negotiations on market access regarding distribution services.

Question 39

We thank Viet Nam for providing the information on import prohibitions, quotas and licensing contained in WT/ACC/VNM/25/Rev.1. Given that Viet Nam is seeking transitional arrangements to eliminate these measures, we request Viet Nam to provide additional information justifying its claim for a transitional period.

Answer:

Viet Nam requested transitional periods for quantitative restrictions applied to a limited list of goods mainly for the purpose of facilitating the domestic industries to restructure and adjust to competition.

In addition, the transitional period also helps government agencies to adjust to new management regime which comply with WTO provisions.

Question 40

Table 1 of Page 2, Viet Nam's Non-Tariff Measures—October 2002, WT/ACC/VNM/25. As indicated in WT/ACC/VNM/25, motorcycles (including mopeds) and cycles fitted with an auxiliary motor, with or without side-cars, and side-cars under HS 8711 are classified as military equipment and subject to import prohibition.

We would appreciate knowing that on what grounds motorcycles can be considered as military equipment? How does Viet Nam explain the legality of this import ban on motorcycles?

Answer:

Please refer to document WT/ACC/VNM/25/Rev.1. Viet Nam does not prohibit the importation of all kinds of imported motorcycles, but prohibits the importation, registration and circulation within the country of those motorcycles with capacity over 175 cm³. Motorcycles with capacity over 175 cm³ are only allowed to be imported for the special purposes such as security, army forces, or sports.

Question 41

In relation to the import prohibition on imported tobacco and cigarettes (Table I of WT/ACC/VNM/25/Rev.1 refers), does Viet Nam impose a similar prohibition on domestic product, or is this a case where national treatment does not apply? If a similar prohibition is imposed on domestic production and sale, we request Viet Nam to provide details of this prohibition.

Answer:

The import prohibition applied to tobacco and cigarettes is part of the overall campaign against tobacco consumption and production. Viet Nam only takes advantage of the existing tobacco production units, but has no intention to develop the domestic cigarette industry. Development of new production units is discouraged.

Recently, Viet Nam has signed the Framework Convention on Tobacco Control which was adopted by the World Health Organization on 21 May 2003. This convention was achieved in an effort to limit the number of death tolls arising from tobacco related diseases. In this connection, Viet Nam will build up concrete action plans to control and gradually eliminate domestic production and consumption of tobacco in accordance with WHO programs.

Question 42

Table 2 of Page 4, WT/ACC/VNM/25 indicates that various commodities are subject to either quota or licence requirements, but others are subject to both quota and licence requirements. Furthermore, according to the explanation provided in the Notes, the timetables for the phasing out of the quota or licence requirements are not exactly the same. Please explain how the system described in the Table is administered. How are the quota or licence requirements on the one hand and the phase out requirements on the other hand related to each other?

Answer:

Please refer to the Schedule on Non-tariff Measures that has been submitted to the WTO for more information.

Question 43

Is the list in Table II of WT/ACC/VNM/25/Rev.1 a complete list of all products subject to import quotas and import licensing?

Answer:

Table II of document No. WT/ACC/VNM/25/Rev.1 has included all non-agricultural products that are subject to quantitative restrictions. Regarding agricultural products, Viet Nam proposes to apply a small number of tariff rate quotas in place of normal import quota.

Question 44

Does Viet Nam impose import quotas or import licensing on any agricultural products? We recall that such measures have been imposed on beef (of 0201), dairy products (of 0401-0404), citrus (of 0805), vegetable oils (of 1507-1516), sugar (of 1701), fruit juices (of 2009), wine (of 2204), and preparations of a kind used in animal feeding (of 2309). Have these measures been eliminated.

Answer:

Viet Nam does apply some quantitative restrictions on agricultural products. These restrictions will be completely eliminated upon Viet Nam's accession, except for a limited number of products which Viet Nam has proposed to apply tariff rate quotas. Please also refer to the Offer on Tariff Rate Quotas for more information.

Question 45

In relation to Products Subject to Line-Management (List 1 of Appendix 7 of WT/ACC/VNM/3/Add.1), we note that these measures act as a barrier to trade and, in many cases, there is no justification under the WTO for such measures. We request Viet Nam to advise whether the products listed in List 1 are still subject to import licensing. Have there been any changes to the list since it was submitted to the Working Party in 1998?

Answer:

All line-management measures which are import restrictive have been removed. Remaining line-management measures are applied to a small number of products, such as pharmaceutical products, plant seeds, fishery breeds.

These measures are not trade distortive and are only applied for the purpose of inspecting and supervising product quality and safety. The development and application of these measures are based on WTO provisions, especially those under Article XX and XXI of GATT 1994.

Question 46

With reference to Appendix 7 of WT/ACC/VNM/3/Add.1, we request Viet Nam to provide concrete evidence that the import licensing measures imposed by line ministries do not have

trade-restricting effects. If the measures have import-restricting effects, we request Viet Nam to provide details of the import restraints that are imposed for each product. Are such measures applied without discrimination to all import sources in accordance with the MFN requirements of the WTO? Does Viet Nam propose to modify these measures to eliminate trade-restricting effects? We request Viet Nam to supply details of the action it intends to take and the timetable for this.

Answer:

Viet Nam does not apply any line-management measures which create barriers to trade or discriminate among different sources of imports in a manner inconsistent with WTO provisions.

Question 47

We note that, for a number of products (in chapters 27, 36, 87 and 93), Viet Nam proposes in WT/ACC/VNM/25/Rev.1 that import licensing will not be eliminated. We request Viet Nam to provide information showing that, in these cases, import licensing will be applied in conformity with the WTO Agreement on Import Licensing Procedures? In particular, we request Viet Nam to provide information showing that import licensing will not be applied in a manner that restricts imports.

Answer:

Please refer to the updated Action Plan for implementing of WTO Agreement on Import Licensing Procedures that has been submitted to the WTO Secretariat for circulation to the Members of the Working Party.

Question 48

We note that, for a number of products, Viet Nam proposes in WT/ACC/VNM/25/Rev.1 that import licensing will be eliminated within periods of 3-6 years. We request Viet Nam to advise whether such import licensing has a trade-restrictive effect (contrary to Article XI of the GATT), or whether it is applied consistently with the WTO Agreement on Import Licensing Procedures?

Answer:

Please refer to the revised Schedule on Non-tariff Measures that has been submitted to the WTO Secretariat for more information.

Viet Nam requested transitional periods for quantitative restrictions applied to a limited list of goods mainly for the purpose of facilitating the domestic industries to restructure and adjust to competition. In addition, the transitional periods also help the government agencies to adjust to new management regime which comply with WTO provisions.

Licenses are maintained to manage the application of transitional quantitative restrictions. Regarding the application of these licenses, please refer to the updated Action Plan for implementing of WTO Agreement on Import Licensing Procedures that has been submitted to the WTO Secretariat for circulation to the Members of the Working Party.

Question 49

We request Viet Nam to provide justifications for its proposed retention of quotas for 3-6 years on a range of products listed in Table II of WT/ACC/VNM/25/Rev.1, given that Article XI of the GATT 1994 precludes the application of such quantitative restrictions.

Answer:

Viet Nam does understand the comments that such quantitative restrictions do not comply with WTO provisions and hence has submitted a phasing-out schedule. This schedule, with some limited transitional periods, is to allow the domestic industries and the government agencies to have a short period to adjust to new changes and to comply with WTO provisions. Licenses, if maintained, will be applied consistently with WTO provisions and with the updated Action Plan for implementing of WTO Agreement on Import Licensing Procedures that has been submitted to the WTO Secretariat for circulation to the Members of the Working Party.

Question 50

Where quotas are imposed (as listed in WT/ACC/VNM/25/Rev.1), can Viet Nam provide details of the quotas, including volumes of imports permitted, and conditions that must be met? If any of the licensing arrangements have trade restrictive effects, can Viet Nam provide the details of how licensing is applied in such cases?

Answer:

Viet Nam does not provide for fixed volumes of quotas for the whole year. Quotas are administered flexibly on the basis of the gaps between total demand and supply quantity of the goods in question. The volumes of quotas are decided by the Ministry of Trade, in consultation with the Ministry of Planning and Investment and line ministries in charge of the goods. Import licenses are issued in a consistent manner with WTO provisions and with the updated Action Plan for implementing of WTO Agreement on Import Licensing Procedures that has been submitted to the WTO Secretariat for circulation to the Members of the Working Party.

Question 51

For products where quotas and licensing are proposed by Viet Nam in WT/ACC/VNM/25/Rev.1 for elimination within periods of 3-6 years, we request Viet Nam to advise whether progressive liberalisation is envisaged in each year of the relevant period. We request Viet Nam to provide details of arrangements envisaged to progressively phase out the measures.

Answer:

Please refer to the Schedule on Non-tariff Measures that has been submitted to the WTO Secretariat for more information. This Schedule contains maximum periods within which Viet Nam will eliminate quantitative restrictions applied on each particular product. Viet Nam does not exclude the possibility to speed up the elimination schedule.

Question 52

Many products are subject to line management. We request Viet Nam to provide a full description of any trade-restricting measures that it proposes to retain after accession for products falling within the following HS headings, together with a detailed WTO justification for this retention.

2301	2302	2306	2309
2936	3002	3004	3701
4411	4901	4902	4911
5103	7101	7102	7103
7106	7108	8443	8524
8525	8526	8527	8901
8906	9018		

Answer:

Viet Nam only maintains quantitative restrictions on those products listed in the document WT/ACC/VNM/25/Rev.1 and its subsequently revised version. These restrictions are mainly for the purpose of facilitating the domestic industries to restructure and adjust to competition. In addition, the transitional period also helps government agencies to adjust to a new management regime which complies with WTO provisions.

For other products, Viet Nam commits to apply only WTO-consistent measures upon accession.

Question 53

Could Viet Nam provide up-to-date and comprehensive information on all current quantitative restrictions and non-tariff measures imposed on imports, together with a WTO justification or plans for their removal? Viet Nam has previously indicated that the phase-out period for NTMs and QRs would be rather long, while in some cases it had not determined the timeframe for their elimination (eg. the import restriction on cars - WT/ACC/VNM/9, Reply 103). Viet Nam has indicated that an elimination schedule of QRs will be provided in the context of market access negotiations; has such a schedule been submitted to the Working Party?

Answer:

Viet Nam only maintains quantitative restrictions on those products listed in the document WT/ACC/VNM/25/Rev.1 and its subsequently revised version. Viet Nam commits not to apply any WTO-inconsistent measures upon accession, except for those indicated in the above-mentioned documents.

Please refer to the revised Schedule on Non-tariff Measures that has been submitted to the WTO Secretariat for more information.

(f) Import licensing procedures**Question 54**

We thank Viet Nam for its Action Plan on Import Licensing Procedures (WT/ACC/VNM/22). We are concerned that Viet Nam is not proposing to implement key provisions of the WTO Agreement on Import Licensing Procedures until early 2006, which would appear to preclude accession at an earlier date.

In addition, the proposed timetables for meeting some basic obligations are rather long and need to be reconsidered. For example, 1 January 2006 is proposed as the deadline for the basic obligation in Article 1.4(a) that rules and all information concerning procedures for the submission of applications are to be published, whenever practicable, 21 days prior to the effective date of the requirement but in all events no later than the effective date. The same is

proposed in respect of basic obligations on non-automatic licensing set out in Article 3.3 and Article 3.5(b), (c), (d) and (f). We note that conformity with such obligations from the date of accession is important especially considering Viet Nam still has many goods subject to import licensing. Is Viet Nam able to agree to a faster implementation of these important requirements of the Agreement?

Answer:

Viet Nam has provided the updated Action Plan for implementing of WTO Agreement on Import Licensing Procedures to the WTO Secretariat. Viet Nam commits to comply fully with provisions of the Agreement on Import Licensing Procedures upon accession.

Question 55

Approval for import. Under the current system, foreign invested companies have to obtain approval for import from the relevant Vietnamese authority. In order to obtain approval, companies are obliged to submit a detailed production and sales program, which has been a burden on foreign-invested companies. This system has, in fact, largely impeded trade, and should be improved immediately.

Answer:

Foreign invested enterprises are allowed to import all types of goods consistent with their investment licenses. The issuance of import licenses is automatic when imported goods are consistent with the investment licences. For the convenience of foreign investors, the issuance of import licenses has been authorized to provincial and municipal people's committees.

Question 56

Liberalization for the import of used equipment and machinery. When foreign companies import used equipment or machinery as its fixed asset, the Vietnamese Government requests them to submit a certification issued by a third organization in the exporting country that the quality remaining of such equipment or machinery is more than 80 per cent. As we are concerned about the ambiguous definitions and the inconsistent interpretation by the Government when implementing such a requirement, it hopes that Viet Nam will abolish such requirements. Such abolishment will enable foreign companies, especially small and medium enterprises, to easily purchase used equipment or machinery and thus to reduce costs in comparison to buying a new one. In this manner, such companies will be able to invest the money saved in other key areas.

Answer:

Requirements on the remaining quality of imported equipment, machinery and materials are stipulated in Article 72, Decree 24/2000/ND-CP guiding the implementation of the Amended Law on Foreign Investment as follows:

- Equipment, machinery and materials imported into Viet Nam for the purpose of implementing an investment project must meet the quality, standards and technical design requirements, be consistent with the requirements of production, environmental protection, and labour safety as specified in the feasibility study, and conform to the applicable provisions on importing equipment and machinery.

- With the exception of used machinery and equipment included in the list of prohibited imports, enterprises with foreign owned capital and parties to business co-operation contracts shall be entitled to decide on, and shall be responsible for the economic and technical efficiency of, the import of used equipment and machinery and shall comply with the technical and environmental provisions of the Ministry of Science and Technology.

According to Decision No. 06/2003/QĐ-BKHCN dated 3 April 2003 of the Ministry of Science and Technology, the requirement that the remaining quality of imported used equipment should be over 80 per cent is no longer effective. Imported used equipment are only subject to general requirements on labour safety, environment protection and quality of products and service as generally applicable by the existing laws.

Question 57

Viet Nam has undertaken to submit a detailed Action Plan on Implementation of the Agreement on Import Licensing Procedures (Reply 31, WT/ACC/VNM/16). We seek advice on when this plan will be forwarded for consideration of the Working Party.

Answer:

Viet Nam has provided the Action Plan for implementing of WTO Agreement on Import Licensing Procedures at the 6th Meeting of the Working Party (document no. WT/ACC/VNM/22). Before the 7th Meeting, Viet Nam has provided the updated version of the Action Plan to the WTO Secretariat.

(h) Customs valuation

Question 58

In the Customs Valuation portion of the Factual Summary on Viet Nam, (beginning para. 112), Viet Nam states that it provided information on the implementation of the Customs Valuation Agreement in WT/ACC/VNM/3/Add.1, Annex 4 (12 March 1998). However, that document is basically Viet Nam's response to the Valuation Questionnaire, and predates Viet Nam's most recent Law on Customs (June 2001). We request that Viet Nam revised the document again, reference to the portions in their new law that implement the Valuation Agreement.

With thanks to Viet Nam for agreeing in its response to question 33 of WT/ACC/VNM/23 to provide a copy of the Law on Customs to the Working Party. We request that Viet Nam provide an official translation.

In para. 116 of the factual summary, Viet Nam states that an importer could appeal to a higher administrative body or bring a case before the Administrative Court. However, if the importer opts to make a claim to the General Department of Customs, an appeal to the Administrative Court would not be accepted, even though the importer could still appeal to the Minister of Finance. This provision is inconsistent with Article 11(2) of the Valuation Agreement which provides that the legislation of each Party shall provide for the right of appeal without penalty to a judicial authority. This means that even if the importer does appeal to the General Department of Customs in Viet Nam, the opportunity to subsequently appeal to a judicial authority should not be foreclosed.

Answer:

1. The Law on Customs was approved by the National Assembly of Viet Nam in 2001. In June 2002, The Government issued Decree No. 60/ND-CP on customs valuation of imported

products to implement the Agreement on Implementation of Article VII of GATT 1994. As stipulated by this Decree, the customs values are contracted price. This regulation has been applied on imported products from ASEAN since July 2002. However, due to limited capacity and technical difficulty, this regulation has been only applied on a step-by-step basis.

For additional information relating to customs valuation, Viet Nam provides herewith the unofficial English translation of Decree No. 60/2002/ND-CP.

2. Regarding a copy of the Law on Customs: Viet Nam has submitted the unofficial English translation of the Law on Customs to the Members of the Working Party.
3. Pursuant to Vietnamese laws, an importer, at his discretion, has the right to appeal to a higher administrative body of the decision-making agency, or to bring a case before the Administrative Court.
 - If the importer opts to make a claim to the higher customs bodies, the importer can also appeal to the Minister of Finance. According to the existing regulations, in case the decision by the Minister of Finance violates the laws and causes damages to the complainant's interests (the decision is not final), the importer may claim to the Prime Minister. Otherwise, the decision by the Minister of Finance regarding complaint on import/export duties is final.
 - In case the complainant opts to bring a case before the Administrative Court, the Administrative Court will handle the case in accordance with the general prosecution procedures.

However, in case the complainant takes both of the above options (i.e. to appeal to a higher administrative body and to bring a case before the Administrative Court), in order to handle the administrative case in a timely manner, it is clearly stipulated that: if there is only one complainant, such case will be handled by the Administrative Court; if there are more than one complainant who are unable to agree on their options, such case will be handled by the administrative body at a higher level, even when it has been brought to the Administrative Court.

As a first step, Viet Nam's laws have recognized the right to make the final appeal to the Court as required by the WTO provisions. In order to comply with the WTO Agreement on Customs Valuation, with respect to allowing importer to appeal to the Administrative Court even when the case has been appealed to the Ministry of Finance, Viet Nam will consider applying WTO provisions as indicated in the legislation program.

Question 59

Viet Nam has indicated that ad valorem duties may be converted into specific duties in the future. Uncertainty in tariff rates reduces the transparency of Viet Nam's foreign trade regime and is trade-inhibiting. We strongly urge Viet Nam to undertake a commitment not to convert ad valorem duties to specific duties in the future.

Answer:

The reason that Viet Nam may have to apply specific duties in the future arises from the fact that there are many incidents of trade frauds, especially understating prices of high-value goods for invading import duties. Specific duties may be necessary in the context that Vietnamese customs staffs have limited assessment and valuation capacity.

Viet Nam will try its best, however, to limit the list of goods which may be subject to specific duties, and at the same time, ensure that the possible application of specific duties to a number of items will not impact the transparency and stability of the customs tariffs. Viet Nam will continue to update information related to the transformation into specific duties of these items.

Question 60

We are concerned with the proposed maintenance by Viet Nam of minimum customs values for certain products after accession (final point of WT/ACC/VNM/20). In paragraph 115 of the Factual Summary Viet Nam notes that it is in the process of phasing out minimum import prices. We request Viet Nam to advise for which products minimum customs values are used, the justification for their continued use and when they will be eliminated. We note that this practice results in higher tariffs on imports from some countries and is not consistent with the MFN, transparency and consistency requirements of the Agreement on Customs Valuation.

Answer:

As indicated in the Factual Summary, the list of products subject to minimum customs values is being reduced. At present, this list contains only the following products:

- Beverages;
- Tyres, inner tubes, and plastic front stripes for automobiles, motorcycles and bicycles;
- Facing and paving ceramic tiles, sanitary wares;
- White and tinted flat glass, mirrors;
- Vacuum flasks, glass inners for vacuum flasks;
- Combustion piston engines, electric motors and generators;
- Electric fans;
- Tobacco leaves;
- Automobiles and spare parts;
- Motorcycles and spare parts.

(as stipulated in Decision 164/2000/QD-BTC dated 10 October 2000, Decision 136/2001/QD-BTC dated 18 December 2001 and Decision 164/2002/QD-BTC dated 27 December 2002)

The maintenance of minimum customs values for certain products arises from the current shortcomings in management skills and technical infrastructures of the customs authority and the supporting supervising mechanism of other agencies such as corporate accounting, auditing and payment system. These deficiencies lead to wide-spreading trade frauds at customs border. In the list of minimum customs values, a small number of products are subject to different minimum prices based on their brand names. This type of difference in minimum price is the result of calculating prices on the basis of cost components and reasonable commissions on the domestic market, which are actually different.

As indicated in the Action Plan for Implementing the Agreement on Customs Valuation, Viet Nam is making preparatory steps to apply the provisions of this Agreement and to eventually eliminate the minimum customs values. In the implementation of the Action Plan, there have been activities where plans could not be met. With the current capacity, Viet Nam needs a transitional period to complete its legal system, upgrade the technical facilities and develop the necessary human resources. These action are required in order to control the fraudulent trading practices and to fully comply with the requirements of the Agreement on Customs Valuation.

Viet Nam will try its best to inform the Working Party of the deadline for complete elimination of minimum customs values after reviewing the capacities of the agencies involved in the implementation of the notified Action Plan.

Question 61

Paragraph 119 of the Factual Summary notes that most minimum customs values will be eliminated in 2004, and all minimum custom values eliminated when the Customs Valuation Agreement is fully implemented. We would appreciate a more precise timeframe for the elimination of minimum custom values.

Answer:

As indicated in the Factual Summary, the list of products subject to minimum customs values is being reduced. At present, this list contains only the following products:

- Beverages;
- Tyres, inner tubes, and plastic front stripes for automobiles, motorcycles and bicycles;
- Facing and paving ceramic tiles, sanitary wares;
- White and tinted flat glass, mirrors;
- Vacuum flasks, glass inners for vacuum flasks;
- Combustion piston engines, electric motors and generators;
- Electric fans;
- Tobacco leaves;
- Automobiles and spare parts;
- Motorcycles and spare parts.

(as stipulated in Decision 164/2000/QD-BTC dated 10 October 2000, Decision 136/2001/QD-BTC dated 18 December 2001 and Decision 164/2002/QD-BTC dated 27 December 2002)

The maintenance of minimum customs values for certain products arises from the current shortcomings in management skills and technical infrastructures of the customs authority and the supporting supervising mechanism of other agencies such as corporate accounting, auditing and payment system. These deficiencies lead to wide-spreading trade frauds at customs border. In the list of minimum customs values, a small number of products are subject to different minimum prices based on their brand names. This type of difference in minimum price is the result of calculating prices on the basis of cost components and reasonable commissions on the domestic market, which are actually different.

As indicated in the Action Plan for Implementing the Agreement on Customs Valuation, Viet Nam is making preparatory steps to apply the provisions of this Agreement and to eventually eliminate the minimum customs values. In the implementation of the Action Plan, there have been activities where plans could not be met. With the current capacity, Viet Nam needs a transitional period to complete its legal system, upgrade the technical facilities and develop the necessary human resources. These action are required in order to control the fraudulent trading practices and to fully comply with the requirements of the Agreement on Customs Valuation.

Viet Nam will try its best to inform the Working Party of the deadline for complete elimination of minimum customs values after reviewing the capacities of the agencies involved in the implementation of the notified Action Plan.

Question 62

Viet Nam still uses minimum import prices in customs valuation which result in higher tariffs on imports from some countries, which raised issues of non-MFN treatment of imports, Transparency and consistency with the Customs Valuation Agreement (paragraph 112 of the Factual Summary). This is an issue we wish to see Viet Nam address by bringing its customs valuation regime into conformity with the CVA.

Answer:

As indicated in the Factual Summary, the list of products subject to minimum customs values is being reduced. At present, this list contains only the following products:

- Beverages;
- Tyres, inner tubes, and plastic front stripes for automobiles, motorcycles and bicycles;
- Facing and paving ceramic tiles, sanitary wares;
- White and tinted flat glass, mirrors;
- Vacuum flasks, glass inners for vacuum flasks;
- Combustion piston engines, electric motors and generators;
- Electric fans;
- Tobacco leaves;
- Automobiles and spare parts;
- Motorcycles and spare parts.

(as stipulated in Decision 164/2000/QD-BTC dated 10 October 2000, Decision 136/2001/QD-BTC dated 18 December 2001 and Decision 164/2002/QD-BTC dated 27 December 2002)

The maintenance of minimum customs values for certain products arises from the current shortcomings in management skills and technical infrastructures of the customs authority and the supporting supervising mechanism of other agencies such as corporate accounting, auditing and payment system. These deficiencies lead to wide-spreading trade frauds at customs border. In the list of minimum customs values, a small number of products are subject to different minimum prices based on their brand names. This type of difference in minimum price is the result of calculating prices on the basis of cost components and reasonable commissions on the domestic market, which are actually different.

As indicated in the Action Plan for Implementing the Agreement on Customs Valuation, Viet Nam is making preparatory steps to apply the provisions of this Agreement and to eventually eliminate the minimum customs values. In the implementation of the Action Plan, there have been activities where plans could not be met. With the current capacity, Viet Nam needs a transitional period to complete its legal system, upgrade the technical facilities and develop the necessary human resources. These action are required in order to control the fraudulent trading practices and to fully comply with the requirements of the Agreement on Customs Valuation.

Viet Nam will try its best to inform the Working Party of the deadline for complete elimination of minimum customs values after reviewing the capacities of the agencies involved in the implementation of the notified Action Plan.

Question 63

Viet Nam has indicated that ad valorem duties may be converted into specific duties in the future. Uncertainty in tariff rates reduces the transparency of Viet Nam's foreign trade regime

and is trade-inhibiting. We strongly urge Viet Nam to undertake a commitment not to convert ad valorem duties to specific duties in the future.

Answer:

The reason that Viet Nam may have to apply specific duties in the future arises from the fact that there are many incidents of trade frauds, especially understating prices of high-value goods for invading import duties. Specific duties may be necessary in the context that Vietnamese customs staffs have limited assessment and valuation capacity.

(i) Other customs formalities

Question 64

Recently, smuggled goods, i.e. those having failed the required customs procedures, have been rampant in the Vietnamese market, thus preventing goods imported through the normal channel of required customs procedures from being able to compete fairly. Furthermore, it has been pointed out that this situation is one of the factors creating continued high tariffs on products, the type of which is also subject to smuggling. We sincerely hope that Viet Nam will make further efforts to improve this situation.

Answer:

Like many other countries in the region, Viet Nam is faced with smuggling and fraudulent trading practices. Realising that it is important to stop this situation, Viet Nam has been exerting its best efforts against smuggling and fraudulent trading practices and will continue these efforts in order to ensure fair trade and reinforce legal compliance.

The legal framework for combating against smuggling and fraudulent trading practices is contained in the Law on Customs. In addition, the Government has instructed the concerning ministries and agencies to take certain actions, such as launching anti-smuggling campaigns by the sea, continuously improving anti-smuggling measures, setting up the Steering Committee to cope with smuggling and fraudulent trading practices. Viet Nam's Customs Authority has received international assistance, especially from the World Customs Organisation and the Customs Authority of Japan.

Question 65

We note that illegally-copied goods are also rampant on the Vietnamese market since Viet Nam has not yet sufficiently developed its laws on the protection of intellectual property rights. Viet Nam should thus continue to develop the relevant laws, and should also improve the enforcement capability of border measures.

Answer:

Viet Nam takes note of the above comments. For more detailed information, please refer to the Action Plan Implementing the TRIPs Agreement.

Question 66

We also note that Viet Nam's customs procedures are complicated and not predictable. Furthermore, it is said that there are some cases where procedures are different depending on the customs' official. Viet Nam should not only establish prompt and simplified customs procedures but should also enhance their transparency.

Answer:

The Law on Customs and its guiding legal documents clearly stipulate such issues as customs procedures (some of which are in conformity with international customs practices as regulated in the revised Kyoto Convention), customs inspection and supervision. Implementation is further guided by a number of Decisions by the Minister of Finance. All of these regulations are widely published in the Official Gazette and in the mass media. They are also posted for public notice at the customs declaration points and uniformly implemented all over the country.

As a result, customs procedures are publicly known and transparent. There is no reason for a customs official to change the stipulated procedures or misuse the publicized provisions. In addition, regulations on business ethics, internal inspection mechanism, and “hot-line” communication system set up in customs agencies also help reduce bribery practices among customs officials.

The General Department of Customs has organized training courses to improve understanding on the above regulations for customs officials, and cooperated with the Viet Nam Chamber of Commerce and Industry to raise awareness of the Law on Customs and its guiding legal documents for other agencies and the business community.

(j) Pre-shipment Inspection

Question 67

Paragraph 122 and 123 of Page 25, Viet Nam Factual Summary. With regard to Paragraph 122-123, Viet Nam intended to conform to the Agreement on Pre-shipment Inspection only after accession to the WTO. We would like Viet Nam to provide information if there is any draft laws or regulations regarding PSI in process and if the Working Party has the opportunity to review during the accession period.

Answer:

Currently, Viet Nam does not apply any provisions and has no draft regulations with respect to pre-shipment inspection. Viet Nam commits that any possible provisions or regulations related to pre-shipment inspection will comply with WTO requirements upon accession.

(k) Application of internal taxes on imports

Question 68

In question 40 of document WT/ACC/VNM/23 we requested a list of all indirect taxes (sales, VAT and excise taxes) applied to goods, indicating the HS category and the rates applied to imports and to domestic products. There appears to be a typographical error in Viet Nam's reply. Has Viet Nam made this list available?

Answer:

We would like to apologize for the printing error in the response to question 40 of document WT/ACC/VNM/23. The lists of indirect taxes (value added tax and excise tax) together with an indication of HS category and the applied rates are available through documents WT/ACC/VNM/28/Add.2 and WT/ACC/SPEC/VNM/1/Rev.2.

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

Question 69

Viet Nam has indicated that it intends to make use of Special Agricultural Safeguards (SSG). SSGs for agricultural products are a transitional measure ascribed to some WTO members as a result of Uruguay round commitments. These measures are not available to acceding countries.

Answer:

Agriculture is an important sector for the socio-economic life of the country. About 70 per cent of the population is dependent on agriculture production. Therefore, the reservation of the right to apply special safeguards (SSG) is necessary. Many WTO Members, including newly acceded Members have been allowed to such right.

Question 70

Paragraph 124 - 125 of Page 25-26, Viet Nam Factual Summary. As indicated in the Viet Nam Factual Summary, the Law on Import and Export Duties passed by the National Assembly of Viet Nam on 20 May 1998 allows the imposition of additional duty on goods originating in countries that applied "discriminatory treatment against Vietnamese goods with respect to tariff rates and/or any other measures". What is the definition of the "discriminatory treatment"? My delegation is of the view that it is best for WTO Members to follow the procedures of Dispute Settlement to address any issues relate to "discriminatory treatment".

In addition, Viet Nam's new Ordinance on Safeguard Measures went into effect on 1 September 2002, and the Government will pass new Ordinances on Anti-dumping and Countervailing Measures by the end of 2003. Could Viet Nam commit that the above legislation complies with the WTO Agreement on Safeguards, Agreement on Implementation of Article VI of the General Agreement on Tariffs and Trade 1994, and the Agreement on Subsidies and Countervailing Measures?

Answer:

"Discriminatory treatment" in this context can be understood as the application of tariff or non-tariff barriers on goods imported from Viet Nam on less favourable conditions as compared to those measures applied on goods imported from other countries. This provision is to ensure that Viet Nam is not disadvantaged in international trade when it is not yet a WTO Member

Viet Nam commits that new legal documents in the areas indicated in the question will be in full conformity with WTO provisions upon accession.

2. Export Regulation

(f) Export financing, subsidy and promotion policies

Question 71

The Vietnamese Ministry of Finance issued a Decision on 29 June 2001 to provide export bonuses, based on the amount of export revenue generated, for a range of products including rice, coffee, canned vegetables, canned fruit and pork. It appears this scheme has not been notified to the Working Party and Viet Nam should provide details of the mechanism. We also remind Viet Nam that in WTO accession negotiations there is a clear expectation by WTO

Members that potential new members will not introduce new restrictive or trade-distorting measures during the period of the negotiations.

Answer:

Please refer to Program No. VIII (on export reward and export subsidies) of the Notification on Subsidies for the period 2001-2002 which has already been submitted to the Working Party before its 7th Meeting.

Question 72

We understand that Viet Nam considers that because it is a developing country with per capita GNP below US\$1,000 it would be able to maintain export subsidies (in other words, in accordance with Article 27.2(A) and Annex VII of the Subsidies and Countervailing Measures Agreement (SCM). This provision in the SCM is specific to developing countries referred to in Annex VII of the SCM. It is not a self-nominated or expanding list of countries. While we are prepared to consider some flexibility on how Viet Nam phases out its prohibited export subsidies, Viet Nam has no right to recourse under these provisions to continue to provide prohibited subsidies following its accession.

Further, we do not consider that the provisions of Article 27.4 of the SCM Agreement available to developing countries, or the fast-track procedures under Article 27.4 for developing countries with a small share of world export trade agreed at the Doha Ministerial meeting, are available to Viet Nam. Given that Viet Nam will be acceding to the WTO after the completion of the implementation period for phasing out export subsidies for developing countries, we consider that Viet Nam must phase out its export subsidy schemes upon accession.

Answer:

Viet Nam would like to thank for the flexible position regarding Viet Nam's subsidies programs. Viet Nam is prepared to discuss these programs in details with Members of the Working Party.

Question 73

We thank Viet Nam for the information provided on the use of export subsidies for rice, pork, coffee, fruits and vegetables, export bonus upon performance and export promotion. We would like to note however that our position is that all export subsidies will have to be eliminated on accession to the WTO. A zero binding however will not affect Viet Nam's ability to use the provisions of Article 9.4 of the Agreement on Agriculture. We would be interested in learning more about the Export Bonus upon Performance and Export Promotion schemes with the view that these may be able to continue with appropriate notification under other provisions of the Agreement on Agriculture.

Answer:

Viet Nam takes note of the Member's proposal. Detailed information related to the above programs has been provided to the Working Party before its 7th Meeting.

Question 74

We are concerned that Viet Nam appears to be using a number of incentives that export performance linked (e.g. tax concessions/exemptions dependent upon percentage exported,

paragraphs 138, 147-148, 155) and may be contingent on local content use. The criteria for granting such incentives/exemptions are unclear and possibly open to abuse.

Answer:

The granting of corporate income tax preference to enterprises achieving a certain export ratio is an incentive aimed at encouraging foreign investments. As a low-income country, Viet Nam needs to attract foreign investments. As a result, Viet Nam hopes that WTO Members, on the basis of the Annex VII of the Agreement of Subsidies and Countervailing Measures, give Viet Nam certain flexibility to maintain this measure to achieve its development objectives. Viet Nam commits to remove this type of subsidy when the average income per capita reaches US\$1,000 per annum.

Requirement on localization ratio is a separate provision which is not related to the preferential corporate income tax rates. The criteria for granting such subsidies are described in the Notification on Subsidies for the period 2001- 2002.

Question 75

Viet Nam's Foreign Investment Regulation no. 24/2000/ND-CP stipulates that foreign-invested enterprises producing a rate of exports higher than 30 per cent or that use a large quantity of local raw materials and resources may enjoy a longer tax exemption period and VAT reduction incentives. This regulation encourages exports and the purchase of Viet Nam's local materials, but it may violate the TRIMs Agreement and national treatment principle, and result in export subsidies and import substitute subsidies. We therefore ask Viet Nam to eliminate this regulation.

Answer:

The granting of corporate income tax preference to enterprises achieving a certain export ratio is an incentive aimed at encouraging foreign investments. As a low-income country, Viet Nam needs to attract foreign investments. As a result, Viet Nam hopes that WTO Members, on the basis of Annex VII of the Agreement of Subsidies and Countervailing Measures, give Viet Nam some flexibility to maintain this measure to achieve its development objectives. Viet Nam commits to remove this type of subsidy when the average income per capita reaches US\$1,000.

With regard to the schedule for eliminating TRIMs measures, please refer to the Action Plan for Implementing TRIMs Agreement.

With regard to information related to tax reduction and exemption programs, please refer to the Notification on Subsidies for the period 2001- 2002 which has been submitted to the Working Party before its 7th Meeting.

Question 76

With regard to Paragraph 137 of the Factual Summary, according to an announcement (65/2001/QD-BTC) of Viet Nam's Ministry of Finance, the Government of Viet Nam currently has an export subsidy fund in order to assist, encourage and promote exports. This measure seems to amount to a form of export subsidy which is referred as a prohibited subsidy in Article 3 of the Agreement on Subsidies and Countervailing Measures. We would therefore like to ask Viet Nam to address the issue.

Answer:

Decision No. 65/2001/QĐ-BTC stipulates the granting of supports depending on export revenue for a number of agricultural products (rice, coffee, pork, canned fruit...) in 2001. This program has been indicated in the Notification of Domestic Supports and Export Subsidies in Agriculture (in the format of WT/ACC/4) Therefore, we would be willing to discuss the program in the context of our WT/ACC/4 Notification discussions.

Viet Nam is a developing country having small-scale agricultural production. Supports and subsidies provided by the Government to help farmers in their trade is of great importance, in particular during the 1999-2001 period which witnessed intense fluctuations of agricultural commodity prices. Against the current market conditions as such, Viet Nam needs to maintain certain level of export subsidies for agricultural products in order to stabilize the production and economic development in the agriculture sector.

As the amount of these export subsidies is negligible, they may not cause significant distorting effects to international trade. However, Viet Nam commits that upon accession the level of agricultural export subsidies will be bound at the current level and subsequently scaled down in accordance with WTO provisions which are effective at the time of Viet Nam's accession.

3. Internal policies affecting foreign trade in goods

(a) Industrial policy, including subsidy policies

Question 77

In its response to question 45 of WT/ACC/VNM/23, Viet Nam indicates that it plans to eliminate import duty incentives based on local content requirements by the end of 2006. A transition for implementing the provisions of the SCM agreement is not automatically available to acceding countries, and we will wish to discuss the feasibility of eliminating these subsidies upon accession.

Answer:

Viet Nam commits to comply with the TRIMs Agreement and not to re-introduce the phased-out TRIMs upon accession. The Action Plan for the implementation of this Agreement has been revised as follows:

- In 2000-2003: to eliminate import duty preferences contingent on localization ratio with respect to enterprises producing and assembling motorcycles specified in the Inter-Ministry Circular No 176/1998/TTLT-BTC-BCN-TCHQ.
- Upon accession: (i) to eliminate localization requirements and import duty preferences contingent upon localisation ratio with respect to enterprises producing automobile parts, electronic and mechanical products specified in the Inter-Ministry Circular No 176/1998/TTLT-BTC-BCN-TCHQ; (ii) to amend the list of sectors in which licensing of investment is conditional (which is attached to Decree No. 24/2000/ND-CP) to eliminate the criteria requiring investments to develop raw material sources with respect to vegetable oil, sugar cane, and wood; (iii) to eliminate in practice the localization requirement in the investment licences applicable to projects producing or assembling automobiles and motorcycles.

Question 78

In questions 50, 55, 59, 73 and 79 of WT/ACC/VNM/23, Viet Nam indicates that it cannot evaluate the amount budgeted for several subsidy programs because they are not covered by the State budget. Can Viet Nam provide an accounting or an estimate of the revenue foregone under these incentive programs?

Answer:

The amounts foregone by the Government under the incentive programs are mainly in the forms of tax reduction or exemption. Due to the limitation of the statistic system, data from the tax returns submitted by enterprises are not collected. Viet Nam lacks technical and human resource to calculate or estimate the exact amount of these tax incentives from these tax returns.

Question 79

We are pleased to learn from Viet Nam's response to question 65 of VNM 23 that Viet Nam no longer provides import-substitution projects with incentives. Viet Nam should commit not to reintroduce such incentives in the future.

Answer:

Question No. 65 in document WT/ACC/VNM/23 is relating to foreign investment regime. Viet Nam commits to comply with the TRIMs Agreement upon accession.

Question 80

We acknowledge Viet Nam's response to question 78 of WT/ACC/VNM/23 concerning Viet Nam's access to flexibilities under Article 27 of the SCM agreement (Special and Differential Treatment) .Viet Nam maintains in its responses to WT/ACC/VNM/23 ", questions 65, 66, 67, 68, 74, 75, 76, etc., that it is entitled to maintain export-contingent incentives. We wish to reiterate that Viet Nam is not one of the developing countries automatically covered by the flexibilities in Article 27. Any access to these flexibilities must be negotiated with members of the Working Party. We would have difficulty accepting subsidies that Viet Nam has already eliminated in practice, such as incentives for import- substitution projects.

Answer:

Viet Nam takes note of the above comments. As export-contingent incentives are mainly aimed at encouraging investment and economic development, Viet Nam hopes that Members of the Working Party will show flexibility in considering this issue.

- (b) Technical regulations and standards, including measures taken at the border with respect to imports**

Question 81

Paragraph 160 of Page 32, Viet Nam Factual Summary. As indicated in the Factual Summary, Viet Nam has embarked on a program to harmonize national standards with international standards. We would like to know the current status of this program, especially in the area of conformity assessment procedure for electrical and electronic products.

Answer:

Viet Nam is implementing international standard harmonization programs in the framework of ASEAN, APEC, ASEM. Electrical and electronic products account for an important part in these programs.

Besides the above programs, in the annual plan for Vietnamese standard development, Viet Nam also reviews and develops standards for, among others, electrical and electronic products. These standards are mainly developed on the basis of relevant international standards.

The conformity assessment procedures applicable to electrical and electronic products are implemented through the safety certification scheme promulgated by the Ministry of Science and Technology. The scheme is based on the System 4 of third party certification (including Type Testing and Post-Market Surveillance at factory and on the marketplace).

Question 82

We thank Viet Nam for its action plan for implementation of the WTO TBT Agreement (WT/ACC/VNM/24). We register our concern that Viet Nam is not proposing to implement key TBT Agreement provisions until late 2005/early 2006, which would appear to preclude early accession.

We welcome the commitment in the TBT Action Plan (point 1) that all newly promulgated technical regulations; standards and conformity assessment procedures will be in full compliance with the TBT Agreement from accession. However, longer time-frames are being proposed for some basic obligations. For example, the establishment of a TBT Enquiry Point and a national TBT notification body are proposed for the 4th quarter of 2005. We would expect that these would be operating upon accession. We request Viet Nam to provide information on its legislative and administrative arrangements for setting and enforcing standards (including mandatory standards), as well as arrangements for conformity assessment, and the steps/proposed changes that will be undertaken to achieve full conformity by the stated deadline.

We welcome Viet Nam's programme to harmonise national standards with international standards. We request Viet Nam to advise within what time-frame it expects to complete the review of existing standards.

Answer:

Viet Nam commits to undertake obligations under the TBT Agreement upon accession. With regard to TBT Notification Authority and TBT Enquiry Point, Viet Nam would like to inform as follows:

- Viet Nam has recently established the National TBT Notification Authority and TBT Enquiry Point. At present, however, only organizational structure is established. Other aspects such as staff training, working instructions and procedures development and provision of equipment and facilities are still under way. At the same time, Viet Nam is also developing a network of TBT contact-points consisting of concerned ministries, agencies and local authorities to support the effective operation of the National TBT Notification Authority and TBT Enquiry Point and the implementation of the TBT Agreement.
- Besides Viet Nam's own efforts, Viet Nam needs technical assistance from WTO Members to operate the National TBT Notification Authority and TBT Enquiry Point smoothly in order to implement all notification and enquiry obligations under the TBT Agreement upon accession (presumably in 2005).

Regarding the request for providing information related to the development and application of standards and conformity assessment, Viet Nam has reviewed and amended its related regulations in conformity with WTO/TBT Agreement. The important points of amendment, as shown in recently issued legal documents, are as follows:

- National Standards are developed on the basis of Technical Committee method. The draft standards are widely disseminated for public comments before adoption (website <http://www.vsc.org.vn>);
- The adopted National Standards are all voluntary;
- Compulsory National Standards account for only 4 per cent (more than 200 standards) out of 5600 existing standards;
- Conformity assessment procedures are developed on the basis of relevant ISO/IEC guidelines;
- Recently, Viet Nam has carried out scheme of supplier's declaration of conformity to standards and technical regulations in order to enhance supplier's responsibility and decrease the level of intervention by administrative procedures. At present, the scheme is the most popular in the application of conformity assessment.

Question 83

Viet Nam's justification for the import prohibition of certain goods (in paragraph 103 and paragraphs 101-103 of WT/ACC/VNM/23) needs clarification. The importation of second hand clothing and internal combustion engines below 30CV are prohibited on the grounds of safety and traffic security respectively. It is not clear that total prohibition is the least trade restrictive method available to satisfy those concerns. Furthermore, it is not clear what methods have been employed to assess these goods. Our expectation is that the methods used will conform to the requirements of the TBT Agreement. We would welcome further clarification from Viet Nam on these matters.

Answer:

The import prohibition applied to used goods (clothing and internal combustion engines with capacity below 30 CV) is necessary to protect human health, safety and the environment. In Viet Nam's view, the assessment method for the purpose of import prohibition is not inconsistent with provisions of the TBT Agreement.

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

Question 84

Although Viet Nam has submitted an action plan, which is welcomed, there is (at paragraph 171) some ambiguity as to whether Viet Nam will be basing its SPS measures on international standards, or whether they will be developed or formed in conformance of those standards. Grateful if Viet Nam could clarify its intentions in respect of this point.

Answer:

Paragraph 171 of the Factual Summary already confirms that standards applied by Viet Nam are in conformity with international standards, if they exist, and with the SPS Agreement.

Question 85

Paragraph 168 of Page 34, Viet Nam Factual Summary. Concerning the implementation of SPS measures, only four (4) Regulations/Ordinances are listed in Paragraph 168 of Page 34 of

Viet Nam Factual Summary. We would like to ask the following questions with regard to the SPS standards or technical regulations referred to in WT/ACC/VNM/2 and the Viet Nam Factual Summary:

1. Explain how WTO members can obtain access to texts or other information on SPS measures relating to trade.
2. How does Viet Nam enact, amend, or repeal SPS standards and technical regulations?
3. How does Viet Nam recognize the equivalence of a foreign SPS standard or technical regulation or conformity assessment procedure? How many standards, regulations or conformity assessment procedures have been thus recognized?
4. Some of Viet Nam's import requirements for animals or animal products demand protection levels higher than those provided by the OIE International Animal Health Code. We request that the competent authorities of Viet Nam provide sufficient scientific data to justify those requirements and are in compliance with the SPS Agreement.
5. Does Viet Nam have in place a legal provision which obligates the government and/or standardization bodies to conduct periodic reviews on its enforcement regulations to ensure that they are based on the relevant international standards, recommendations and guidelines where they exist and that their SPS measures are flexible and not overly burdensome?
6. Does Viet Nam accept a policy of regionalisation and have regulations that clearly permit the import of animals or animal products from designated regions unaffected by animal diseases in countries where those diseases occur? Will Viet Nam accept such country's SPS regulatory framework as a reference for recognition of regionalisation in the animal health sector?

Answer:

1. According to the amended Law on Promulgation of Legal Documents, legal documents shall be published in the Official Gazette and become effective at least 15 days thereafter.

A number of legal documents related to SPS issues can be found from the following websites:

<http://www.mard.gov.vn>

<http://www.ppd.gov.vn>

Upon accession, Viet Nam will notify WTO Members of all SPS regulations and measures in a manner consistent with the SPS Agreement via the National Enquiry Point and the National SPS Notification Body which will be established under the Ministry of Agriculture and Rural Development.

2. Viet Nam has been a member of some international SPS organizations such as Codex, OIE etc. It is in the process of formulating and adapting its national standards in accordance with the standards set out by these international organizations.
3. At present, Viet Nam is a member of OIE. As a result, it recognises the equivalence of foreign SPS standards, technical regulations, and conformity assessment procedures which are all

based on OIE's standards. Viet Nam has recognized 3 international standards in the sanitary area and signed bilateral sanitary agreements with a number of countries.

4. Viet Nam's import requirements for animals and animal products are based on the OIE International Animal Health Code. Any unsuitable import requirements (if they exist) will be revised to meet OIE standards.
5. Viet Nam is in the process of revising and assessing its legal system, including SPS regulations, in order to ensure the consistency with WTO provisions.
6. Viet Nam accepts a policy of regionalisation and has regulations that clearly permit the import of animals and animal products from designated regions unaffected by animal diseases in countries where those diseases occur. Viet Nam will accept such country's SPS regulatory frameworks as a reference for recognition of regionalisation in the animal health sector.

Question 86

We thank Viet Nam for its action plans for implementation of the WTO SPS Agreement (WT/ACC/VNM/11/Rev.1 and Rev.2). We register our concern that Viet Nam is not proposing to implement key SPS Agreement provisions until late 2005/early 2006, which would appear to preclude early accession.

Viet Nam's replies in WT/ACC/VNM/23 on SPS measures and its SPS Action Plans (WT/ACC/VNM/11/Rev.1 and Rev.2) acknowledge the deficiencies in its ability to meet obligations under the SPS Agreement. This is a very important area and Viet Nam needs to accelerate its efforts. We request Viet Nam provide details of legislative and other developments to address these problems. The revised action plan (WT/ACC/VNM/11/Rev.2) lists a few actions Viet Nam has set for 2003-2004. We request Viet Nam to advise which actions listed for 2002-2003 in WT/ACC/VNM/11/Rev.1 were completed.

Answer:

The draft of the revised Veterinary Ordinance was completed on 7 July 2003 and has been submitted to the Government (foreseen to be endorsed and promulgated in Quarter IV/2003). The draft of The Government's Decree guiding the implementation of the Ordinance on Animal Disease Control, Animal Quarantine and Inspection and Veterinary Hygiene Inspection, Veterinary Drug Management will be completed in Quarter III/2003 and submitted for endorsement and promulgation in Quarter I/2004.

In the sanitary area, Viet Nam has also issued a number of legal documents to further improve its legal system:

- Government Decree promulgating Regulations on Plant Protection, Regulations on Plant Quarantine and Regulations on Pesticides Management;
- Decision by the Minister of Agriculture and Rural Development on the State's administration over the fumigation and disinsection of items that are subject to quarantine.
- Decision by the Minister of Agriculture and Rural Development on the State's administration over the importation of plant varieties and beneficial organisms.
- Circular of the Minister of Agriculture and Rural Development guiding the implementation of domestic plant quarantine activities;

Viet Nam has also completed a phytosanitary certification management system.

Question 87

The signing of veterinary cooperation agreements and bilateral cooperation agreements on phytosanitary measures with certain countries are listed actions for 2003-2004 in WT/ACC/VNM/11/Rev.2. We note that these are not multilateral issues and request Viet Nam to delete them from the action plan. If they are to be retained in the action plan, the list should be comprehensive (currently it is not).

Answer:

Viet Nam agrees to remove the veterinary bilateral co-operation agreements from the Action Plan Implementing the SPS Agreement.

(d) Trade-related investment measures

Question 88

We appreciate Viet Nam's commitment not to replace "local content requirements" with "local manufacturing requirements."

With respect to Viet Nam's request to maintain local content requirements until the end of 2006, we note that the transition period for such requirements for developing countries under the TRIMs agreement expired at the end of 2000.

We appreciate that Viet Nam has eliminated foreign exchange balancing requirements for domestic and invested firms, and has no intention to reinstate them.

Answer:

Viet Nam commits to comply with the TRIMs Agreement and not to re-introduce the phased-out TRIMs upon accession. The Action Plan for the implementation of this Agreement has been revised as follows:

- In 2000-2003: to eliminate import duty preferences contingent on localization ratio with respect to enterprises producing and assembling motorcycles specified in the Inter-Ministry Circular No 176/1998/TTLT-BTC-BCN-TCHQ.
- Upon accession: (i) to eliminate localization requirements and import duty preferences contingent upon localisation ratio with respect to enterprises producing automobile parts, electronic and mechanical products specified in the Inter-Ministry Circular No. 176/1998/TTLT-BTC-BCN-TCHQ; (ii) to amend the list of sectors in which licensing of investment is conditional (which is attached to Decree No. 24/2000/ND-CP) to eliminate the criteria requiring investments to develop raw material sources with respect to vegetable oil, sugar cane, and wood; (iii) to eliminate in practice the localization requirement in the investment licences applicable to projects producing or assembling automobiles and motorcycles.

Regarding the elimination of foreign exchange balancing requirements, Viet Nam commits not to reinstate them for domestic and foreign invested firms.

Question 89

We note that whereas some original WTO members received narrow extensions to comply with the TRIMS agreement, no WTO applicant has been given an extension to phase out TRIMS since 1995. We request Viet Nam to advise when it will modify its TRIMS action plan in order to fully comply with the TRIMS Agreement upon accession.

Answer:

Viet Nam commits to comply with TRIMs Agreement upon accession and has revised the Action Plan for the implementation of this Agreement as follows:

In 2003-2004: to eliminate import duty preference contingent on localization ratio with respect to enterprises producing and assembling motorcycles specified in the Inter-Ministry Circular No. 176/1998/TTLT-BTC-BCN-TCHQ.

Upon accession: (i) to eliminate localization requirement and import duty preferences contingent upon ratio with respect to enterprises producing electronic and mechanical products specified in the Inter-Ministry Circular No 176/1998/TTLT-BTC-BCN-TCHQ; (ii) to amend the list of sectors in which licensing of investment is conditional (attached to Decree No. 24/2000/ND-CP) to eliminate criteria requiring investment attached to the development of raw material sources with respect to vegetable oil, sugar cane, and wood; (iii) to eliminate in practice the requirement that the localization program should be covered in the investment licences of projects to produce or assemble automobiles and motorcycles.

Question 90

With regard to Paragraph 178-180 of the Factual Summary, the Government of Viet Nam requires that 80 per cent of certain listed products of foreign-invested enterprises must maintain the export sales ratio of 80 per cent. We understand that there have been some cases in which foreign-invested enterprises have been asked to maintain the same export sales ratio for products not on that list (such as pork). Please specify for us what the export ratio is and what is the basis for carrying out such a regulation. Furthermore, since the current measure is inconsistent with the WTO TRIMs Agreement, we urge the Government of Viet Nam to eliminate this restriction.

Answer:

As we understand, the export ratio requirement is not covered by the TRIMs Agreement. However, in order to show goodwill in the negotiations, Viet Nam commits not to apply this requirement upon accession.

Question 91

Although we note Viet Nam's position regarding trade-related investment measures, as mentioned in the relevant documents, we do request Viet Nam to fully comply with the TRIMs Agreement upon its accession to the WTO, without invoking a transition period.

Answer:

Viet Nam commits to comply with the TRIMs Agreement and not to re-introduce the phased-out TRIMs upon accession. The Action Plan for the implementation of this Agreement has been revised as follows:

- In 2000-2003: to eliminate import duty preferences contingent on localization ratio with respect to enterprises producing and assembling motorcycles specified in the Inter-Ministry Circular No 176/1998/TTLT-BTC-BCN-TCHQ.
- Upon accession: (i) to eliminate localization requirements and import duty preferences contingent upon localisation ratio with respect to enterprises producing automobile parts, electronic and mechanical products specified in the Inter-Ministry Circular No 176/1998/TTLT-BTC-BCN-TCHQ; (ii) to amend the list of sectors in which licensing of investment is conditional (which is attached to Decree No. 24/2000/ND-CP) to eliminate the criteria requiring investments to develop raw material sources with respect to vegetable oil, sugar cane, and wood; (iii) to eliminate in practice the localization requirement in the investment licences applicable to projects producing or assembling automobiles and motorcycles.

Question 92

We note that whereas some original WTO members received narrow extensions to comply with the TRIMs Agreement, no WTO applicant has been given an extension to phase out TRIMs since 1995. We request Viet Nam to advise when it will modify its TRIMs action plan in order to fully comply with the TRIMs Agreement upon accession.

Answer:

Viet Nam commits to comply with the TRIMs Agreement and not to re-introduce the phased-out TRIMs upon accession. The Action Plan for the implementation of this Agreement has been revised as follows:

- In 2000-2003: to eliminate import duty preferences contingent on localization ratio with respect to enterprises producing and assembling motorcycles specified in the Inter-Ministry Circular No 176/1998/TTLT-BTC-BCN-TCHQ.
- Upon accession: (i) to eliminate localization requirements and import duty preferences contingent upon localisation ratio with respect to enterprises producing automobile parts, electronic and mechanical products specified in the Inter-Ministry Circular No 176/1998/TTLT-BTC-BCN-TCHQ; (ii) to amend the list of sectors in which licensing of investment is conditional (which is attached to Decree No. 24/2000/ND-CP) to eliminate the criteria requiring investments to develop raw material sources with respect to vegetable oil, sugar cane, and wood; (iii) to eliminate in practice the localization requirement in the investment licences applicable to projects producing or assembling automobiles and motorcycles.

Question 93

With reference to paragraph 179 of the Factual Summary, we request Viet Nam to confirm that the 80 per cent export requirement has indeed been abolished in practice, for those ten sectors which were removed from the List of products subject to export requirement in Decision No 718 of the Minister of Planning and Investment in December 2001.

We request Viet Nam to provide a list of the remaining 14 products which are still subject to the 80 per cent export requirement, as well as a plan and timetable for termination of this requirement for the remaining 14 sectors.

Answer:

As we understand, the export ratio requirement is not covered by the TRIMs Agreement. However, in order to show goodwill in the negotiations, Viet Nam commits not to apply this requirement upon accession.

(f) Free zones**Question 94**

Paragraph 187 of Page 40, Viet Nam Factual Summary. The Factual Summary indicates that enterprises located in export processing zones are allowed to sell their products in the domestic market upon approval by the Ministry of Trade, and domestic companies buying such products are required to pay import duties. Please clarify the criteria for approval by Ministry of Trade, and whether there are restrictions on the local sale percentage. What is the basis for calculating duties levied on products for local sales?

As mentioned at the end of paragraph 188, enterprises in export processing zones are subject to 10 per cent profit tax. Please clarify if this applies to all enterprises in export processing zone (or only on those that export a certain percentage of their products). Also, what is the relationship between taxes on profits and export performance?

Answer:

Enterprises located in export processing zones are allowed to sell their products in the domestic market. Their products are subject to the same procedures and the same import duties as applied to normal imported products.

According to Article 46, Decree 24/2000/ND-CP guiding the implementation of the Law on Foreign Investment, the 10 per cent income tax are applicable to enterprises located in export processing zones which meet the following objective criteria:

- a) engaging in infrastructures development of export processing zones; or
- b) meeting at least two of the following conditions:
 - being included in the list of projects in which investment is specially encouraged;
 - investing in regions with especially harsh socio-economic conditions;
 - being a service enterprise in the export processing zones;
 - assigning assets to the State of Viet Nam without any compensation after expiry of operation.

4. Policies affecting foreign trade in agricultural products**(a) Imports****Question 95**

We note that Viet Nam is seeking right of recourse to the Uruguay Round Special Agricultural Safeguard (SSG) on a number of products (including beef, sugar, and fruit juice). Under Article 5 of the Agriculture Agreement, SSGs were only available to Members that undertook conversion of import restrictions to tariffs in the Uruguay Round negotiations. Viet Nam has no

automatic right to such SSGs. We request Viet Nam to reconsider its approach on items where it is proposing SSGs.

Answer:

Agriculture is an important sector for the socio-economic life of the country. About 70 per cent of the population is dependent on agriculture production. Therefore, the reservation of the right to apply special safeguards (SSG) is necessary. Many WTO Members, including newly acceded Members, have been accorded such right.

(e) Internal policies

Question 96

We request Viet Nam to confirm that it will bind its agricultural export subsidies at zero and that, after accession, Viet Nam will not maintain or revert to agricultural export subsidies.

Answer:

Viet Nam commits that export subsidies shall be bound at the currently applied level and shall be subject to reduction according to relevant WTO rules upon Viet Nam's accession.

Question 97

Regarding the foreign financing received for cultivating 40,000 hectares of arabica coffee in the north of Viet Nam, we should like to know whether this is in the form of reimbursable loans or donations.

Answer:

Coffee development program in the North of Viet Nam has the total investment capital of VND 700 billions, in which FRF 212 millions (equivalent to VND 400 billions) were borrowed from the French Development Agency (AFD). This loan was in the form of loan, not grants.

Question 98

Concerning export subsidies and domestic support for the coffee sector, Viet Nam refers to the information given in document WT/ACC/SPEC/VNM/3 of 5 November last, which we welcome as a demonstration of the transparency with which Viet Nam is moving ahead with the accession process.

Answer:

Viet Nam takes note of this comment.

Question 99

As regards export subsidies, we are surprised that Viet Nam reports strong growth in the volume of coffee benefiting from subsidies between 1999 and 2001, which would appear to cover all coffee exports. We would like to know the reasons for this increase. We should also like to know the state of coffee which is referred to as green, roasted, ground, etc. and receive data on the total volume of coffee produced, as well as the total volume of coffee exported in the same state for the same years.

Together with the members of the Cairns Group, we have for many years been seeking to ensure that this type of practice in agriculture be banned at the WTO. We hope that, before acceding to the WTO, Viet Nam will phase out all export subsidies for coffee, in any form, as well as those for any other agricultural products.

Answer:

In the years 2000, 2001 and 2002, the world coffee price decreased by 60 per cent (the lowest price level over the past 40 years). In response to the Coffee Temporary Storage Plan of the International Coffee Organization, in 2000 and 2001, Viet Nam bought 150,000 tonnes (equivalent to 20 per cent of Viet Nam's coffee output) for temporary stockholding. The plan, however, failed due to several reasons (major coffee producing countries all had excessive coffee output, some countries did not implement the plan ...), resulting in lower price. In such circumstance, Viet Nam had to export this stored amount and compensate for the incurring losses.

This amount is not all our coffee outputs of Viet Nam. To contribute to improving the world coffee market situation, Viet Nam has gradually decreased coffee growing area and outputs, improved quality and promotes domestic consumption in order to respond to the proposed plans of International Coffee Organization. The below table shows that export volume in the year 2003 have decreased considerably in comparison with the year 2001.

Viet Nam export more than 90 per cent of its coffee outputs which are mainly in the form of green coffee. Roasted and ground coffee are mainly for domestic consumption.

Coffee outputs and export volume of Viet Nam over the past years

Year	Output ('000 tons)	Export (' 1000 tons)
- 2000	802	734
- 2001	844	931
- 2002	730	720
-2003 estimated	680	660

(Source: Statistical Yearbook 2001 and 2002. Year 2003: estimated by Ministry of Agriculture and Rural Development)

Viet Nam commits that export subsidies shall be bound at the currently applied level and shall be subject to reduction according to relevant WTO rules upon Viet Nam's accession.

Question 100

With regard to domestic support, tables DS4 and DS9 incite us to ask Viet Nam for clarification regarding the non-product-specific AMS, because this refers specifically to rice and coffee, so we wonder whether this support should not be classified in another category.

Answer:

Support was only provided to rice and coffee. However, Viet Nam could not separate the support amount between rice and coffee. Therefore, the program was put in Table DS:9.

- **Core Labour Standards**

Question 101

Paragraph 220 of Page 46, Viet Nam Factual Summary. As indicated in the Factual Summary, Viet Nam has ratified many conventions in the framework of the ILO. The Labour Code of Viet Nam and other related legal documents have been established with reference to the conventions and recommendations of the ILO.

According to ILO's documentation, there are altogether 8 conventions related to the current Core Labour Standards. These are conventions No. 29, 87, 98, 100, 105, 111, 138 and 182. According to the materials Viet Nam provided, however, the aforementioned conventions have not been ratified by Viet Nam. We would like to know whether Viet Nam has stipulated regulations prohibiting forced labour, child labour, discrimination on employment, etc., and how it enforces such regulations.

Answer:

Viet Nam has ratified many conventions in the framework of the ILO. The Labour Code of Viet Nam and other related legal documents have been established with reference to the conventions and recommendations of the ILO. The Vietnamese Government have also been seeking technical assistance and advisory service from the ILO in order to ensure the conformity of the laws of Viet Nam with the recognised international standards. Any Member of the Working Party who are interested in this subject may be in contact with the ILO for further details.

5. Policies affecting foreign trade in other sectors

(a) Textiles Regime

Question 102

Per para. 218 of the factual summary, we take note of Viet Nam's statement that it is premature to discuss the base volume according to articles 2 and 3 of the Agreement on Textiles and Clothing. We wish to note that the language of para. 218 is standards language which has been used in other accessions, and is meant to address the terms applied to new applicants for accession, which is not covered in the agreement.

Answer:

We take note of the above comment. We understand that the term "in force on the day before the entry into force of the WTO Agreement" contained in Article 2:1 of the Agreement on Textiles and Clothing should be understood as "on the day before Viet Nam's accession", and that the increase in growth rates provided for in Article 2:13 and 2:14 of the Agreement on Textiles and Clothing should be applied to these base levels, as appropriate, from the date of accession of Viet Nam to the WTO.

Question 103

The Prime Minister's Decision No. 28/TTg, dated 13 January 1997 prohibits the circulation of second-hand consumer goods, including second-hand clothing, based on environment, human health and SPS protections. We are not aware of any specific cases involving spread of disease caused by used clothing. Since the TBT agreement requires Members adopting measures to achieve environmental, public health or other legitimate goals to ensure that such measures do

not create unnecessary obstacles to trade, we would urge that Viet Nam apply less restrictive measures to used clothing imports.

Answer:

Viet Nam takes note of the above comments. In the context that there are no other effective tools to regulate the importation of second-hand clothing and internal combustion engines with capacity below 30 CV, import prohibition applied on these goods is necessary to protect human health and the environment.

Question 104

As indicated in the factual summary section on trading rights (para. 70), the current system does not give foreign-invested firms the same rights to import, import for resale, or export as domestic firms. As a result, imported goods do not benefit from the national treatment requirements of GATT Article III. This system could also be seen as a non-tariff barrier to imports prohibited by GATT Article XI. At the last Working Party meeting, although Viet Nam acknowledged that the current regime violated national treatment it reiterated that it was in the process of "transition" and that it would need to maintain the differences. We reiterate that this is an issue Viet Nam needs to begin to address now so that the discrimination can be eliminated prior to or by the time it accedes to the WTO.

Answer:

Viet Nam confirms that foreign invested enterprises are entitled to export as Vietnamese enterprises. Foreign invested enterprises are also allowed to import all types of goods consistent with their investment licenses.

The importation of goods inconsistent with the investment licenses (i.e. importation for resale) is a matter relating to distribution services. In Viet Nam's view, it should, therefore, be discussed in the context of bilateral negotiations on market access regarding distribution services.

Question 105

All of the components of The WTO Agreement on Import Licensing Procedures are supposed to be implemented prior to a country acceding to the WTO. According to Viet Nam's action plan for implementing the WTO Agreement on Import Licensing, however, Viet Nam intends to use staging through 2006 to implement the Agreement. We request that Viet Nam reexamine and fully describe its legislative plan for implementing the Agreement before acceding to the WTO.

What are the fees associated with getting an import licence?

Answer:

Viet Nam has provided the updated Action Plan implementing the WTO Agreement on Import Licensing Procedures. Viet Nam commits to comply fully with this Agreement upon accession.

The fees associated with getting an import license are small, commensurate with the normal administrative costs, and therefore, do not pose any difficulty for the applicants.

Question 106

Viet Nam bans the import of select used goods. Viet Nam should use internal mechanisms that address environmental, health and safety concerns instead an absolute ban on imports.

Answer:

In Viet Nam's view, the import prohibition applied to used goods (clothing and internal combustion engines with capacity below 30 CV) is necessary to protect human health, safety and the environment.

V. TRADE-RELATED INTELLECTUAL PROPERTY REGIME

1. General

Question 107

- (a) Viet Nam has implemented many IP laws. However, it needs to demonstrate that we can have confidence that these will provide adequate enforcement mechanisms and sanctions to ensure that the IP of its trading partners will be protected.
- (b) TRIPS Agreement Article 39.3 (Protection of Undisclosed Information – Test Data): Viet Nam Government Decree 54/2000 Article 18.4 does not address how the Vietnamese Government itself will protect pharmaceutical and agricultural chemical test data provided to it for marketing approval purposes. We expect other delegations will take the lead on this point but would be interested in how the TRIPS requirement for the Member, itself, to protect such information will be met.
- (c) WT/ACC/VNM/16, Question 99. We feel that the provision for differential fees for nationals and non-nationals is contrary to that provided for in Article 2 of the Paris Convention and Article 3 of TRIPS;
- (d) WT/ACC/VNM/21 Page 3. If the reference here is to an additional fee on top of the application fee to enjoy a priority right, then this is contrary to the Paris provisions;
- (e) WT/ACC/VNM/21 Page 5. Regarding the reference to co-ownership of trademarks, we consider that Viet Nam may be misinterpreting Article 5(C) of the Paris Convention. We believe that Article relates to the concurrent use by separate entities under domestic law. This allows in certain circumstances for different owners to own identical trademarks (we provide for this). Viet Nam appears to be saying that they will not allow a trademark registration to have more than one owner. For us, as with many other countries, a trademark may have joint owners whether they be a number of individuals, firms, a combination of both, etc. The provisions outlined by Viet Nam appear to be unduly restrictive and could provide a limitation on the rights of our trademark owners to seek protection in Viet Nam. It should be noted that collective trademark rights are not the same as joint ownership rights;
- (f) WT/ACC/VNM/21 Pages 30, 34 and 36. We note that as yet that provisions for integrated circuits have not been drafted, nor legislation for seizure of infringing goods or notification of the right holder and importers. We look forward to developments in these areas.

Answer:

- (a) One of the aims of the Vietnamese intellectual property system is to establish an enforcement mechanism together with adequate remedies for protecting intellectual property rights. The intellectual property enforcement system of Viet Nam consists of administrative, civil and criminal procedures and remedies. With the available remedies and active improvement of enforcement bodies, we believe that intellectual property rights will be adequately protected.

- (b) The competent authorities are obliged to ensure the secrecy of the test data submitted under secret keeping rules of administrative authorities, as applications for a patent, utility solution and industrial design are kept secret by the patent office.
- (c) Viet Nam will consider this request in order to amend Circular No. 23/TC-TCT.
- (d) In the Paris Convention, there are no provision on the prohibition of collecting fees in respect of a claim for priority right but the prohibition of collecting fees takes effect only in respect of the late filing of documents for claiming priority right (three months from the date of filing application). The reason for collecting the fees is that the examiner has to do a lot of work so as to compare the application filed with the Office the priority one to find out whether or not the two subject matters under the two applications are identical. The similar provision is also provided for in other countries' laws (e.g. Republic of Korea, the Philippines etc.).
- (e) The function of a trademark is to distinguish the goods or services of different business establishments. The co-ownership of a trademark would cause consumers' confusion when purchasing goods or services. Therefore, the law of Viet Nam does not allow the co-ownership of a trademark. The co-ownership is not obliged by the TRIPS Agreement and Paris Convention. However, Viet Nam would further consider this matter.
- (f) Government of Viet Nam has enacted the Decree on the protection of industrial property rights in respect of layout-designs of semi-integrated circuit. The Decree provides the acts to be deemed as infringement of industrial property rights in respects of layout-designs of semi-integrated circuit. English version of this Decree is accompanied hereby.

Question 108

We are of the view that an acceding country should implement the obligations set out in the TRIPS Agreement upon its accession to WTO without recourse to a transition period, which is applicable to the accession of Viet Nam. In this connection, we wish to have confirmation that Viet Nam is committed to implementing such obligations once acceded to the WTO.

Answer:

Although being a developing country and facing numerous challenges, Viet Nam is doing its best efforts to prepare necessary conditions for the implementation of the obligations set forth in the TRIPS Agreement. Viet Nam confirms that it will ensure full implementation of this Agreement when it becomes a WTO Member.

Question 109

We note Viet Nam's response to Question 127 of document WT/ACC/VNM/23, which shows Viet Nam's intention to implement the TRIPS Agreement. We hope that Viet Nam will continue to make efforts to appropriately establish its laws and regulations in this area, and will provide information on the recent developments in a timely manner. In particular, Viet Nam should establish its Intellectual Property Rights regime, in consistency with the TRIPS Agreement. This regime should cover not only the field of substantive standards regarding copyrights and neighbouring rights, patents, trademarks, industrial designs and commercial secrets, etc., but also that of enforcement, such as civil procedures that allow plaintiffs to bring forward an action regarding infringement, enforcement by the police and boarder measures by the customs authorities. At the same time, we consider it important to know how Viet Nam will actually apply its IPR regimes, in view of granting rights and realizing remedy in a proper and prompt manner. We sincerely hope that Viet Nam will make further efforts in this respect.

Answer:

Viet Nam is in agreement with the Member's points of view and in fact, it has been acting in that direction.

Question 110

We welcome Viet Nam's response stated in paragraph (b) of this question, but shall continue surveillance of the situation to make sure Viet Nam does not introduce discriminatory measures in the future implementation of the Vietnamese system with regard to the Technology Transfer Agreement relating to patents and know-how, etc.

Answer:

Viet Nam shall not provide for any discrimination treatment in respect of technology transfer of industrial property subject-matters, including inventions and know-how.

Question 111

According to Viet Nam's response, there is no limitation on the duration of transferring partnership and trade secrets. Considering that the TRIPS Agreement stipulates that a patent term shall be at least 20 years from the filing date (Article 33), Viet Nam should make it possible to set a term for the Technology Transfer Agreement when reflecting these provisions therein.

Answer:

According to the prevailing laws and regulations, there is no time limit for technology transfer of IP rights to inventions, and trade secrets. The time period for the transfer is subject to the agreement between parties, provided that the subject-matter is still under protection.

Question 112

We are concerned about how royalties in Viet Nam are paid and about the maximum threshold of payment accorded for royalties. Such action may be a cause of hindrance to the field of technology transfer, thereby undermining the intent of Article 28.2 of the TRIPS Agreement, depending on the substantive provisions invoked or on their implementation.

Answer:

Viet Nam is considering the annulment of limitation of the ceiling royalties for IP subject-matters.

(a) Intellectual Property Policy

Question 113

Factual Summary paragraphs 221-222. These paragraphs refer to Circulars, Joint Circulars, Decrees, Ordinances and Decisions. How is each of these promulgated? What are the legislative, judicial or administrative processes that lead to each of these legal instruments? Are they binding authority on the courts?

How can rights holders keep track of the status of the law if successive Decrees, Circulars, Joint Circulars, Ordinances and Decisions refer to the Civil Code and prior decrees and circulars if

no single annotated Civil Code or version contains the most up-to-date amended laws? Is a consolidated text incorporating governing laws, decrees, etc., contemplated?

Does Viet Nam plan to enact an Intellectual Property Code that is separate and apart from the Civil Code? We should note our concern with creating parallel and conflicting sets of laws that could result from enacting both a separate IP Code and IP laws within the Civil Code. On the other hand, a consolidated, single set of IP laws, whether in the Civil Code or an IP Code, is needed to ensure transparency.

We repeat our request to Viet Nam to provide copies of all relevant legal instruments governing the protection of intellectual property rights in Viet Nam, including:

- **Government Decree No. 63/CP of 24 October 1996;**
- **Circular No. 3055/TT-SHCN of 31 December 1996;**
- **Government Decree No. 76/CP of 29 November 1996;**
- **Circular No. 23-TC/TCT of 9 May 1997;**
- **Government Decree No. 12/1999/ND-CP of 6 March 1999;**
- **Circular No. 825/2000/TT-BKHCNMT of 10 May 2000;**
- **Government Decree No. 54/2000/ND-CP of 3 October 2000;**
- **Government Decree No. 06/2001/ND-CP of 1 January 2001;**
- **Government Decree No. 13/2001/ND-CP of 21 April 2001;**
- **Government Decree No. 31i2001/ND-CP of 26 June 2001;**
- **Joint Circular No. 01/2001/TANDTC-VKSNDTC-BVHTT;**
- **Government Decree No. 101/2001/ND-CP of 31 December 2001;**
- **Ordinance on Libraries No. 31/2000/PL-UBTVQH10 of 28 December 2000 ;**
- **Government Decree No. 48/CP of 17 July 1995;**
- **Decision No. 2455/QD-DA of 9 August 1997;**
- **Government Decree No. 26/2000/CP;**
- **Government Decree No. 55/ND-CP of 23 August 2001;**
- **Government Decree No. 06/2001/ND-CP of 1 February 2001;**
- **Circular on implementation of Decree 63/CP, as amended by Decree No. 06/2001/ND-CP;**
- **Circular concerning the reversal of the burden of proof in civil proceedings, from the Supreme People's Court, the Supreme People's Procuracy and the Ministry of Science, Technology and Environment;**
- **Decree No. 07/ND-CP of 1996 on the management of Plant Varieties;**
- **Circular No. 119/2001/TT-BNN of the Ministry of Agriculture and Rural Development.**

Answer:

The above-mentioned legal documents are promulgated in the following order:

- Codes and Laws are drafted by the authorities of the National Assembly, members of the National Assembly, Government, ministries/agencies, etc. and submitted to the National Assembly for promulgation.
- Ordinances are drafted by the offices of the National Assembly, members of the National Assembly, Government, and ministries/agencies and submitted to the Standing Committee of the National Assembly for promulgation.
- Decrees are documents guiding the implementation of Laws, Ordinances, and are drafted by Government agencies and submitted to the Government for promulgation (Decrees could also provide regulations on new subject-matters that need legal regulations where Laws and Ordinances cannot be enacted).

- Circular, Joint Circulars, Decisions are drafted and promulgated by ministries/agencies of ministerial level for the purpose of guiding the implementation of Governmental Decrees.

In principle, the Courts will judge cases based on all of the said legal instruments except regulations on administrative procedures are subject to the implementation by the administrative agencies only.

Recently, in Viet Nam, most of legal documents on amendment and supplement are issued independently (separated from the amended legal documents). Usually, the incorporation of the amendments, revisions into the main texts of the revised legal documents is done by drafting agencies or the relevant management office in the respective field.

A plan of issuing an Intellectual Property Code (or independent Laws on each intellectual property subject-matter) that is separate from the Civil Code is now being studied and considered instead of issuing various documents guiding the implementation of the Civil Code. Viet Nam is aware of the problems that may result from the promulgation of this Code (or these Laws) and will pay attention to these problems in the process of drafting and issuing legal provisions on intellectual property in order to comply with requirements on unity and transparency of the legal system.

Viet Nam has supplied the unofficial English translation of the legal documents on intellectual property through document WT/ACC/VNM/28, with the exception of the following 4 documents for which English versions are not available:

- Joint Circular No. 01/2001/TANDTC-VKSNDTC-BVHTT;
- Ordinance on Libraries No. 31/2000/PL-UBTVQH10 of 28 December 2000;
- Decision No. 2455/QD-DA of 9 August 1997;
- Circular concerning the reversal of the burden of proof in civil proceedings, from the Supreme People's Court, the Supreme People's Investigation Agency and the Ministry of Science, Technology and Environment.

Viet Nam, however, is prepared to provide these Vietnamese language version of these documents for reference to the interested Members.

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

Question 114

Paragraph 225: When does Viet Nam intend to ratify and implement the WIPO Copyright Treaty and the WIPO Performances and Phonograms Treaty?

Answer:

Viet Nam does not have plans for ratifying and joining the WIPO Copyright Treaty and the WIPO Performance and Phonograms Treaty (WPPT). Participation in international treaties which are not provided for in the TRIPS Agreement, as we understand is not an obligation under the WTO.

Question 115

What are Viet Nam's plans regarding accession to the International Union for the Protection of New Varieties of Plants (UPOV)?

Answer:

Viet Nam expects to join UPOV in 2003.

Question 116

In the last bilateral meeting between our delegations which took place on 21 May 2003, the Vietnamese Delegation stated that it planned on joining the Berne Convention as well as the International Convention for the Protection of New Varieties of Plants (UPOV). In order for us to assess if an extension of the accession deadline to those Conventions is necessary, we would be interested to know when these adhesions are likely to occur.

Answer:

Viet Nam is expected to join the UPOV Convention and Berne Convention in 2003.

Question 117

Paragraph 225. Concerning the Rome Convention, it is mentioned in Job No. 3030.3 that the questions whether Viet Nam considered joining this Convention had not been taken yet. We would like to mention that Viet Nam agreed to join the Rome Convention in the context of the bilateral Agreement between us. Therefore, we strongly encourages Viet Nam to ratify the Rome Convention and hereby fulfil its obligations.

Answer:

Viet Nam is also expected to join the Rome Convention in 2003. However, this commitment is under the bilateral Agreement between Viet Nam and Switzerland, not under the WTO framework.

(d) Application of national and m.f.n. treatment to foreign nationals

Question 118

Para 228: Please confirm whether the "Intellectual Property Agent" requirement holds for copyright protection as well as trademark, design, and patent rights.

Answer:

The existing laws of Viet Nam do not require foreign natural or legal persons to carry out the procedures for establishing and enforcing copyrights through intellectual property agents.

According to Article 15.3.b) of Decree No. 63/CP and Article 12.3 of Decree No. 42/2003/ND-CP, only foreign natural persons not resident in Viet Nam or foreign legal entities who have no legal representative or a real and effective industrial or commercial establishment in Viet Nam that must carry out the filing of application for a Protection Title and related procedures through an authorized patent attorney. This condition is required to ensure that all communications between State agencies of Viet Nam and that foreign natural persons, legal entities are conducted properly. This requirement does comply with international practice and the exceptions on national treatment set forth in the TRIPS Agreement.

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

Question 119

With regard to Paragraph 273 related to micro-organism, we would like to ask Viet Nam provide the latest drafting development on the provisions relating to application form, examination guidelines and micro-organism deposit procedures for the purpose of examination of the patent applications for microorganisms. We would also like to note that exclusion of micro-organisms from patent protection seems to violate Article 27 of the TRIPS Agreement.

Answer:

According to the Vietnamese existing laws, micro-organism is not excluded from subject-matters which are protectable as inventions (i.e. it does not fall within the list of subject-matters which are not excluded from protection as inventions as provided in Article 4 paragraph 4 of the Governmental Decree No. 63/CP on detailed regulations concerning industrial property amended and supplemented by the Governmental Decree No. 06/2001/ND-CP).

The drafting of regulations concerning patent applications for micro-organism, procedures for depositing micro-organisms for the purpose of patent examination has been completed (the draft Circular substituting Circular No. 3055/TT-SHCN). This draft Circular is to be submitted to the Ministry of Science and Technology for promulgation in 2003.

Question 120

With regard to Paragraph 231, the Government of Viet Nam intends to collect a service fee from foreign applicants in order to establish, maintain and protect industrial IPR. Please explain in detail how this fee is used and clarify how it complies with national treatment requirements as provided in the TRIPS Agreement

Answer:

The industrial property fees and charges concerning the establishment and maintenance of industrial property rights shall be collected from applicants by the Government (through intellectual property offices) and paid into the State Budget. Activities of the intellectual property agencies are funded from the State Budget.

If the discrimination of fees and charges between Vietnamese and foreigners does not fall under the exceptions provided for in Article 2(i) of the Paris Convention, it shall be annulled by a Circular on amendment of Circular 23/TC-TCT.

(a) Copyright and related rights

Question 121

Paras 233-246: Does Viet Nam intend to provide protection for temporary copies under its revised copyright and related rights laws?

Does Viet Nam intend to provide protection for pre-program signals from broadcast organizations under its revised copyright and related rights laws?

Does Viet Nam intend to provide protection for encrypted signals from broadcast organizations under its revised copyright and related rights laws?

Answer:

Viet Nam will consider the protection for temporary copies and pre-program signals in the process of improvement of the legal system on copyright and related rights.

Viet Nam has planned to provide protection for encrypted signals from broadcast organizations under appropriate legal documents.

(b) Trademarks, including service marks

Question 122

Para 249: Does the prohibition against registration of trademarks containing "names or emblems of international organizations" refer to extension of protection requested by International Intergovernmental Organizations per Article 6ter of the Paris Convention? If not, under what criteria are marks determined to be "names or emblems of international organizations?"

Answer:

Yes. The regulation on the prohibition of registration against trademarks containing “names and emblems of international organisations” refers to the protection required by the International Intergovernmental Organisations according to Article 6^{ter} of the Paris Convention.

Question 123

Trademarks composed of color combinations seem to be excluded from trademark protections. Furthermore, the scope of protection on goods extends only to identical, not similar, goods. These items seem not to comply with TRIPS Article 15.2 and 16.1 respectively.

Answer:

A sign, which is a combination of colours, could be understood as a sign expressed in several colours, and it could be protected by the Vietnamese law on trademarks (Article 785 Civil Code).

The existing laws and regulations on trademarks of Viet Nam are consistent with the requirements of Articles 15.2 and 16.1 of the TRIPS Agreement. According to Article 1 point 24 of Decree No. 06/2001/ND-CP of 1 February 2001 amending and supplementing Decree No. 63/CP of 24 October 1996 on detailed regulations concerning industrial property, the following acts shall also be considered as infringements of the rights of the trademark owners: “Using signs identical with a trademark being protected by a Certificate for trademark registration or by an international registration for goods and services similar to or relating to goods and services in the list registered of the mark or/and using signs similar to the trademark for goods and services of the same kind, similar to or relating to goods and services in the list registered together with the mark, if such use would lead to confusion of the origin of goods”.

Question 124

Paragraph 255. Concerning the right of appeal provided for in 62.5 of the TRIPS Agreement, it is mentioned in Job No. 3030.3 that the Ordinance on the Judgement of Administrative Cases is

going to be amended in the course of this year in order to comply with the obligation of 62.5 of the TRIPS Agreement. We would be interested to know whether a decision about the date of adoption and entry into force has been taken and would like to receive an English translation of the amendment draft.

Answer:

The Ordinance on the handling of administrative cases is being amended. However, the compliance by the prevailing law and regulations with Article 62.5 of the TRIPS Agreement is being considered. The reason is that all administrative decisions concerning the establishment, or maintenance, etc. of industrial property rights are issued by the Director General of the National Office of Intellectual Property. These decisions could be appealed to the Administrative Court. Therefore, the right holders have the rights to appeal against these decisions to the Courts. If they do not want to use this opportunity, they have another option to appeal to the head of the direct supervising organ of the Director General of the National Office of Intellectual Property. The decision of the Minister for Science and Technology is the final judgement on the accuracy of the administrative decision concerning the establishment, maintenance, etc. of the Protection Title issued by the Director General of the National Office of Intellectual Property.

(c) Geographical indications, including appellations of origin

Question 125

Para 257: With respect to Article 10 of Decree No. 54/2000ND-CP, which provides for the criteria of protection of geographical indications, a geographic indication must be in the form of "a word, a sign, a symbol or an image featuring a country or a territory, or a locality of a country." The representative of Viet Nam indicated that according to such criteria, "a geographical indication could be but should not necessarily be a name and geographical indication corresponding to a territory, but should not be a locality in an administrative map." (WT/ACC/VNM/23, Answer to Question 151.) What is meant by "should not be a locality in an administrative map?" Are regions within a country or a territory protectable? Are regions that cross international borders protectable?

Para 258: The subset of geographical indications known as "appellations of origin" are defined in Article 7 of Decree No. 06/2001/ND-CP as being "the geographical name of the country or locality in which goods are manufactured." To be protected, appellations of origin must be registered. Would an appellation of origin consisting of a "region" within a country or locality be registrable?

Para 259: How does Viet Nam provide the legal means for interested parties to prevent the misuse of geographical indications, as required by Article 23.1 of the TRIPS Agreement?

Para 260: Article 6.1(f) of Decree 63/CP prohibits the registration of a trademark identical to or confusingly similar to trade names or protected geographical indications, including appellations of origin. Viet Nam has three protected appellations of origin. Geographical indications do not need to be registered in order to be protected, according to Article 5 of Decree 54/2000/ND-CP. Therefore, how does the National Office of Industrial Property of Viet Nam examine trademark applications to determine if they contain protected geographical indications other than the three registered appellations of origin? Moreover, it is unclear how Viet Nam provides for the exclusive rights of trademark owners with respect to potentially infringing geographical indications (TRIPS Article 16.1 and 24.5). Please explain.

Answer:

Paragraph 257: The territory relating to the geographical indication which “should not necessarily be a locality in an administrative map” means the geographical region may not be an administrative unit indicated in the national administrative map (country, province, district, village). It could be a part of an administrative unit or belong to some administrative units. Therefore, geographical indication of a region or locality in the country, including cross-border territory, shall also be protected if it complies with all requirements stipulated by laws.

Paragraph 258: The appellation of origin of a locality or region in a territory or country shall also be protected; therefore, it can be registered if it complies with all requirements stipulated by law.

Paragraph 259: According to paragraph 3 Article 19 of Decree No. 54/2000/ND-CP, the following activities will be considered as infringing industrial property rights to geographical indications and will be handled by laws (by civil, administrative or criminal procedures): “Using geographical indications in respect of wines or spirits not originating from in the place indicated by geographical indication in question, even where the true origin of the goods is indicated or are used in translation or accompanied by expression such as “kind”, “type”, “imitation”, or the like”. Paragraph 1 Article 47 of Decree No. 63/CP, as amended and supplemented by Decree No. 06/2001/ND-CP, provided that the owner of the Certificate of the right to use an appellation of origin shall have the right “to request the competent State authority to compel other persons to stop infringing acts and pay compensation for damage caused by the illegal use of such appellation of origin or signs confusingly similar thereto, even where the true origin of the goods is indicated or are used in translation or accompanied by expression such as “kind”, “type”, “imitation”, or the like”. These provisions are consistent with the requirements of Article 23.1 of the TRIPS Agreement.

Paragraph 260: At present, there is no list of geographical indications that are protected in Viet Nam. In practise, during the examination of trademark application, the possibility of the trademark being identical with or similar to protected geographical indications shall be handled as follows:

- According to Article 6.2.f) of Decree 63/CP, if a trademark in the filed application is a geographical name, the applicant must submit a document authorising him/her to use the geographical name as trademark. The document is to be issued by the administrative authority of the territory bearing the geographical name. Before issuing the authorisation, the administrative authority must consider carefully and shall issue the authorisation only if such an authorisation does not prejudice interests of others, particularly does not conflict with the right to use the geographical name as a geographical indication.
- In the event that the registering office (National Office of Intellectual Property) grants Protection Title for a trademark without knowing that the filed trademark is indeed a geographical name and no authorisation for using the geographical name as trademark is submitted, the validity of the Protection Title can be cancelled by the appeal procedures.
- According to Article 785 of Civil Code and Article 6.1.f of Decree No. 63/CP (amended and supplemented by Decree No. 06/2001/ND-CP), a trademark shall be protected only if it is not identical with, or confusingly similar to, geographical indications (including appellations of origin) being protected in Viet Nam. The time to be taken into consideration of the protection of geographical indications is the priority date of the trademark application, or the date of requesting recognition of well-known trademark. Pursuant to the said provision, a trademark, which is identical with or similar to a geographical indication, has been filed or granted prior to the date the geographical indication obtained protection in Viet Nam, the rights derived from the trademark shall not be affected by the protection of the geographical

indication/appellation of origin. Thus, the prevailing law and regulations of Viet Nam are consistent with the provisions under Article 24.5 of the TRIPS Agreement.

(e) Patents

Question 126

Para 269: Viet Nam stated it has found no need to accommodate with paragraphs (f) , (k) and (I) of Article 31 of the TRIPs Agreement, and offered no explanation with regard to paragraphs (k) and (I) .Please explain why Viet Nam believes that it need not comply with (k) and (I) of Article 31. Viet Nam's explanation with regard to paragraph (f) of Article 31 is not persuasive. Products produced under a compulsory license may not be subject to "free circulation" in foreign markets, and 31(f) requires that compulsory licenses be granted predominantly for the supply of the domestic market, a condition that is required under TRIPS.

Para 272: Viet Nam states that in the case a rightful appellant has appealed to the Ministry of Science, Technology and the Environment, "it would be understood that he would not take advantage of the opportunity for judicial review." Please explain how this complies with TRIPs Article 32, which requires an opportunity for judicial review of any decision to revoke or forfeit a patent.

Answer:

The compulsory license for an invention shall be granted only under the circumstances prescribed in Article 802 of the Civil Code, which are as follows:

1. The owners fail to use such invention or the use of the invention does not meet the needs of economic and social development of the country without justifiable reasons;
2. The proposed user has made efforts to obtain authorization from the owner on a reasonable price, but failed to reach an agreement with the owner on the right to use the invention;
3. The use of such invention is necessary for meeting the needs of national defense, national security, health or other urgent needs of the society.

Thus, according the said provision, the compulsory license is granted only if it meets the needs of the internal market, complies with the requirement of paragraph (f) Article 31 of the TRIPS Agreement. However, Viet Nam will consider stipulating in more details this matter in some legal documents.

Paragraph (k), Article 31 of the TRIPS Agreement provides for the conditions that allow Members not to be obliged to comply with the provisions set forth in paragraphs (b) and (f) of this Article in respect of controlling anti-competitive practices. The prevailing laws and regulations of Viet Nam do not provide for exceptions as in paragraphs (b) and (f). Therefore, there is no provision corresponding to paragraph (k). However, Viet Nam will consider the promulgation of such provisions when the Competition Law is enacted.

Viet Nam will consider promulgating an additional provision on conditions for granting compulsory licenses for dependant patent.

All administrative decisions concerning the termination or cancellation of patents are issued by the Director General of the National Office of Intellectual Property. These decisions are subject to litigation before the Administrative Court. Thus, the patent owner has the right to file a lawsuit to the court. The patent owner has another option to appeal to the head of the supervising organ of the

Director General of the National Office of Intellectual Property. The decision of the Minister for Science and Technology is final on the administrative decision of the Director General of the National Office of Intellectual Property concerning the patent termination or cancellation.

Question 127

Paragraph 273. Concerning the draft Circular addressing the issue of procedures of patent application in the case of micro organisms we would be interested to know the content of the draft provision and the planned date of entry in force of the Circular.

Answer:

The drafting of regulations concerning patent applications for micro-organism, procedures of deposit of micro-organisms for the purposes of patent examination has been completed (in the draft revised Circular No. 3055/TT-SHCN). This draft document shall be submitted to the Leadership of the Ministry of Science and Technology for approval and promulgation by the end of 2003. The main contents expressed in the draft Circular are as follows:

“6.11 Requirements of invention/utility solution application for biotechnology:

- a) In addition to the general requirements of the description of invention/utility solution prescribed in point 6.7, the description of an invention/utility solution application on genetic sequence or a part of genetic sequence must include the list of genetic sequence presented in accordance to the standards of WIPO ST.25 item 2(ii) (Standard on presentation of the list of nucleotide and amino acid sequences in patent applications).
- b) The National Office of Industrial Property may request the applicant to file the electronic information carriers that indicate nucleotide and amino acid sequences as in the description (e.g. floppy disk, CD-ROM, etc.), which could be read easily by common electronic equipments.
- c) With respect to inventions/utility solutions on or relating to biological material, of which the nature can not to be described or cannot be fully described to the extent that a person with average skill in the art would be able to carry out such a technical solution, that inventions/utility solutions shall be only considered as fully disclosed when:

Sample of this biological material has been deposited to the competent depositary authorities as prescribed in point 6.12 not later than the filing date;

The description has provided all necessary information the applicant may have concerning the characteristics of the biological material; and

The request has indicated name of the depositary authority of the biological material, and the identification number given by the depositary authority to the deposited biological material. All documents certifying this information must be filed with the National Office of Industrial Property within 16 months from the priority date, or not later than the date of filing the request for early publication (if any).

If the applicant is not the depositor of the biological material, the request must indicate the name and address of the depositor, and the document certifying lawful use of the biological material must be filed with the National Office of Industrial Property within 16 months from the priority date, or not later than the date of filing the request for early publication (if any).

6.12 The deposit of biological material

- a) The deposit of sample of biological material is for the purpose of substantive examination of invention/utility solution application concerning this material.
- b) The sample of biological material must be filed with the competent biological material depositary authority before the filing date of invention/utility solution application concerning this material.
- c) The biological material depositary authority (designated by the Ministry of Science and Technology) shall have the responsibility for receiving and storing biological materials deposited by the applicant of the invention/utility solution in accordance with the Regulations on the storing of biological material deposit to be issued by the Ministry of Science and Technology.

Question 128

Question 165 of WT/ACC/VNM/23. Concerning the Circular addressing the issue of reversal of burden of proof, we would be interested to know when it will be promulgated.

Answer:

Regulations on the reversal of burden of proof will be set forth in the Joint Circular of the Supreme People's Court, the Supreme People's Prosecution Institute and the Ministry of Science and Technology (expected to be submitted for promulgation by the end of 2003), or the Civil Procedures Code (expected to be submitted for promulgation in 2004).

Question 129

Question 162 of WT/ACC/VNM/23. In your answer to Question 162 you mention that implementing Article 31 (f) of the TRIPS Agreement in your national law would be ineffective. Is therefore our understanding correct that, independently of the first sale doctrine, products manufactured under a compulsory licence in Viet Nam are destined to supply the Vietnamese market predominantly?

Answer:

Yes.

- (g) Layout designs of integrated circuits

Question 130

Paragraph 277: In Document WT/ACC/VNM/23 of 6 March 2003, Question 167, Viet Nam asked for further clarification as to the definition of the term "discretes." The TRIPs definition of an "integrated circuit" requires "at least one active element. A "discrete" is a device that has only one active element. Discrete transistors, for example, have a gate, source, and drain, with the gate being an active element. There are also bonding pads as other non-active elements. Taken together, the layout design that includes these passive elements and the one active element meets the TRIPS definition. What protections are being offered to "discretes" under new or proposed regulations?

Answer:

According to the Governmental Decree No. 42/2003/ND-CP of 2 May 2003 on Protection of industrial property rights in respect of Layout Designs of Semiconductor Integrated Circuits, discrete layout design is protected as other layout designs.

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

Question 131

Paragraph 280: Has the document guiding the implementation of Decree No. 54/2000/ND-CP referred to in this paragraph been issued? What regulatory authority is responsible for the protection of test data? How does that authority protect the data? For how long does this authority provide the necessary protection?

Answer:

Due to some objective reasons, the legal document on guidance of the implementation of Decree No. 54/2000/ND-CP has not yet been issued. Agencies which have the responsibility to keep secret the test data are the authority that receives data for the purpose of granting authorization for circulation of pharmaceuticals and agricultural chemical products (the Office of Pharmaceutical Administration under the Ministry of Public Health, and the Office of Plant Protection under the Ministry of Agriculture and Rural Development). These agencies shall keep secrets the related data in accordance with regulations on secret data protection by State agencies. The secret data shall be kept within the term of protection, as long as the data still satisfies the criteria of protection of the undisclosed information.

Question 132

In WT/ACC/VNM/23 page No. 70, responding to Question 170, you mention that the prohibition for the regulatory state authority to rely on test data submitted by a first applicant in a marketing approval procedure in order to approve a product of another applicant will be elaborated in a guiding document. We would be interested to be kept updated on the enactment process of this guiding document. If already available, we would also welcome to receive a draft of the guiding principles.

Answer:

The draft document (Circular guiding the implementation of Decree No. 54/2000/ND-CP) is being finalised before sending to Ministries/agencies concerned for comments. The document will be submitted when available.

4. Enforcement

Question 133

We note that illegal - copied goods are also rampant on the Vietnamese market since Viet Nam has not yet sufficiently developed the relevant laws, and should also improve the enforcement capability of border measures.

Answer:

Viet Nam is implementing the plan on improving the intellectual property legal system, including regulations on IPR enforcement (comprising regulations on border measures, and on enhancement of the capacity of the IPR border enforcement agencies).

Question 134

Considering the various laws, decrees and regulations covering the enforcement of intellectual property rights, as well as the great amount of distinct authorities in charge of applying them, are there plans to simplify the system and harmonise this area in order to allow an efficient and transparent enforcement system?

Answer:

Viet Nam has been implementing the plan on the improvement of the legal system on IPR enforcement as well as the enhancement of capacities of law enforcement agencies (See the Action Plan for the implementation of the TRIPS Agreement of Viet Nam).

Question 135

Please describe any new initiatives that are planned to facilitate the combat against counterfeiting and piracy in Viet Nam? Is there a particular action plan in place?

Answer:

Viet Nam has been implementing the plan on the improvement of the legal system on IPR enforcement as well as the enhancement of capacities of law enforcement agencies (See the Action Plan for the implementation of the TRIPS Agreement of Viet Nam).

(c) Any administrative procedures and remedies

Question 136

Para 291: Are there any plans to create a mechanism for inter- agency coordination on intellectual property enforcement among the agencies that have IPR enforcement responsibilities?

Para 292: What is the anticipated date for issuance of the joint circulars on procedures for judgment and protection of confidential information?

Para 293: What is the anticipated date for issuance of the joint circular on additional remedies?

Para 295: Are there any current plans to increase the maximum administrative award of damages above the current limit of VND 1million in order to have a more deterrent effect on infringers, especially in the cases of repeat offenders or violations of injunctions?

Para 296: Are there any current plans to create and/or designate specialized staff or units within any of the various law enforcement agencies with responsibilities for intellectual property enforcement that would be the primary contacts on intellectual property enforcement matters?

Answer:

Paragraph 291: With the view to enhancing the efficiency IPR enforcement agencies, especially to make them be proactive and to improving the efficiency of their interaction, Viet Nam has a plan to radically reform the enforcement system, where the training for enforcement officials will be strengthened. The enforcement system will be simplified towards ensuring administrative enforcement of IPRs by Market Monitoring Organizations, Economic Police, and the Customs. This plan shall be introduced in the Decree on amendment of Decree No. 12/1999/ND-CP on the handling of administrative violations in the field of industrial property (expected to be promulgated by the end of 2004).

Paragraph 292: The procedures of judgment in camera and measures protection for undisclosed information will be included in the Joint Circular of the Supreme People's Court, the Supreme People's Prosecution Institute and the Ministry of Science and Technology (expected to be submitted for promulgation in 2003), or the Civil Procedures Code (expected to be submitted for promulgation in 2004).

Paragraph 293: Additional administrative remedies supplementing provisions of Decree No. 12/1999/ND-CP on the handling of administrative violations in the field of industrial property will be provided for in more detail in a Decree on amendment of Decree No. 12/1999/ND-CP (expected to be submitted for promulgation in 2004).

Paragraph 295: The Ordinance on the handling of administrative violations of 2001 (replacing of the Ordinance on the handling of administrative violations of 1995) provides for the annulment of measures to compel the compensation for damage under administrative procedures. Thus, at present, the compensation for damage is only conducted under the civil procedures.

Paragraph 296: IPR enforcement agencies are administrative agencies responsible for law enforcement in general, but not agency specialized in IP.

(d) Any special border measures**Question 137**

Para 298: What is the anticipated date for issuance of the joint circular covering goods imported for non-commercial purposes, goods exempted under diplomatic procedures, gifts, souvenirs, and personal luggage in connection with border enforcement of industrial property rights?

Para 298: Please expand on the answer provided in Document WT/ACC/VNM/23 of 6 March 2003, Question 184. What is meant by the phrases "economic purpose in all forms," "normal and popular form with regards to works," and "beyond permitted purpose"? Please clarify the statement that "author should only natural person".

Answer:

The Joint Circular on border enforcement of industrial property rights including IP-related imported goods for non-commercial purpose, goods under diplomatic exemption, gifts, souvenirs, and personal luggage, will be submitted for promulgation by the end of 2003.

Viet Nam has issued Decree N° 88/2002/ND-CP of 7 November 2000 of the Government on Management of Goods Imported and Exported for non-commercial Purposes; Circular 36/2002/TT-

BVHTT was issued on 24 December 2002 by the Ministry of Culture and Information Guiding the Implementation of the Decree mentioned above.

Following is the complement to answer to Question 184, document WT/ACC/VNM/23:

- "economic purpose in all forms" means collecting money or getting benefit under any form;
- "normal and popular form with regards to works" means a form of exploitation of works recognized in customary trade practices;
- "beyond permitted purpose" means beyond usages that is allowed by laws and regulations as exceptions;
- An author is a person personally creating the whole or part of a literary, artistic or scientific work (Article 745 of the Civil Code). An author must be a natural person. A legal entity may be an owner of the copyright under the laws but not the author.

5. Laws, decrees, regulations and other legal acts relating to the above

Question 138

We would like to thank Viet Nam for the qualitative excellent information received. In order to pursue this productive work we would like to be kept updated on the promulgation process of the different draft Circulars and guideline documents mentioned in WT/ACC/VNM/23.

Answer:

The following Circulars are in the process of drafting and expected to be submitted in 2003 for promulgation:

- Circular guiding the implementation of Decree No. 54/2000/ND-CP on the protection of industrial property rights to business secrets, geographical indications, trade names and on protection against unfair competition in respect of industrial property;
- Circular guiding the implementation of Decree No. 42/2003/ND-CP on protection of industrial property rights in respect of layout designs of semiconductor integrated circuits;
- Circular on border enforcement of industrial property rights; and
- Circular on guiding the judgment of cases related to industrial property rights.

Drafts of these Circulars are in the process of consultation for improvement. Viet Nam will keep Members of Working Party updated on the new developments of the drafting process.

Question 139

Paragraph 303 (Legislative Action plan): Please provide target dates (including the necessary substeps in the legislative and/or administrative process) for each of the steps outlined in the revised action plan in Documents WT/ACC/VNM/21 and update as appropriate.

Answer:

The Legislation Program and the Action Plan to implement TRIPs Agreement (updating document WT/ACC/VNM/21) has been sent to the Working Party.

Question 140

Per Viet Nam's reply to question 41 in WT/ACC/VNM/23, we request that Viet Nam provide the Working Party with a copy of its Ordinance on Safeguard Action. What is the status of Viet

Nam's efforts to draft Ordinances on Antidumping and Countervailing Duty? We encourage Viet Nam to provide these ordinances to the Working Party, even in draft.

Answer:

The unofficial translation of the Ordinance on Safeguard Measures applied on Trade in Goods with other countries is available through document WT/ACC/VNM/28.

At present, the Ordinance on Anti-dumping Measures and the Ordinance of Countervailing Measures are in the drafting process. It is expected that the Ordinance on Anti-dumping be submitted to the Government in late 2003, and the Ordinance of Countervailing Measures be submitted to the Government in 2004. The 4th version of the draft Ordinance on Anti-dumping Measures has been posted on the Website of the Ministry of Trade for public opinion. However, Viet Nam is not in a position to provide the translation of these Ordinances to the Working Party as the drafts of these Ordinances are still under extensive revisions and changes.

VI. TRADE-RELATED SERVICES REGIME

1. General

Question 141

We are concerned that not all service providers are treated equally in the Vietnamese market. It is important that as Viet Nam moves towards its goal of WTO membership that it also moves towards full MFN application of its policies rather than leaving it until the date of accession. Can Viet Nam comment on this and confirm that it will not introduce new discriminatory arrangements in the services sector?

Answer:

Viet Nam will apply its policies on MFN basis according to its service commitment when it becomes a WTO Member.

Question 142

Section VII, Paragraph 3 of Page 69, WT/ACC/VNM/2. According to WT/ACC/VNM/2, Viet Nam has ratified 12 conventions of the ILO—nos. 5, 6, 27, 45, 80, 81, 116, 120, 123, 124, and 155.

However, according to materials provided by Viet Nam, it has not signed conventions concerning minimum wage, whereas the ILO has several relevant conventions such as nos. 26, 99, 131 and 135. We would like to know that whether Viet Nam has stipulated any rules and regulations concerning minimum wage, and how Viet Nam carries out labour minimum wage protections.

Answer:

The Government of Viet Nam has presented its request on technical assistance and consultancy services to the ILO so as to ensure that Viet Nam's labour regulations conform with internationally recognized standards. Interested Members may be in direct contact with the ILO for further information.

- (f) **Provisions relating to international transfers and payments for current transactions of services**

Question 143

Viet Nam also appears to use a discretionary licensing system that limits the sectors and types of activity allowed. For example, foreign enterprises are unable to import freely certain goods for domestic distribution and any importation being dependent upon the terms of their investment licence (paragraphs 70-74), which may be more onerous than on their domestic counterparts.

Answer:

Viet Nam confirms that foreign invested enterprises are entitled to export as Vietnamese enterprises. Foreign invested enterprises are also allowed to import all types of goods consistent with their investment licenses.

The importation of goods inconsistent with the investment licenses (i.e., importation for resale) is a matter relating to distribution services. In Viet Nam's view, it should, therefore, be discussed in the context of bilateral negotiations on market access regarding distribution services.

2. Policies Affecting Trade in Services

Question 144

As indicated in the Factual Summary (paragraph 309, page 64) and the Memorandum on the foreign trade regime (WT/ACC/VNM/2, page 12 Credit policy), We would like to have the following comments/questions.

- 1. The current licence of a foreign bank branch is only valid for 20 years. To reduce operational uncertainty, this restriction should be removed.**
- 2. Under current regulations, the contribution of the foreign party in a joint-venture bank acting as a commercial bank can not exceed 50 percent of the bank's registered capital; a foreign legal entity or foreign individual is not allowed to own more than 10 percent of the registered capital of a Vietnamese joint-stock commercial bank or joint-stock commercial financial company, and the aggregate share of foreign shareholders can not exceed 30 percent of the registered capital. The above regulations are too restrictive.**
- 3. It is stated in the Memorandum on the Foreign Trade Regime that Viet Nam intends to adjust its credit structure to give more weight to funding the non-state sector, especially to farmer households, and raising the portion of mid-term and long-term financing. However, the Vietnamese Government imposes mid-term and long-term credit limits on foreign bank branches, which contradicts what is set out in its credit policy. To facilitate the participation of more banks in mid-term and long-term borrowing, please explain the purpose of the restriction.**

Answer:

Viet Nam takes note of the above comments. Viet Nam is prepared to discuss them in more details in the context of services bilateral negotiations.

Question 145

Paragraph 310 of Page 64, Viet Nam Factual Summary. The Factual Summary indicates that the establishment of foreign insurance companies in the Vietnamese market is subject to an economic need test. Please elaborate on the meaning of “economic need test” and its actual criteria or the regulations that apply.

Answer:

Viet Nam takes note of the above comments. Viet Nam is prepared to discuss them in more details in the context of services bilateral negotiations.

Question 146

Services (WT/ACC/SPEC/VNM/2/Rev.1). There are a number of limitations as to the form, e.g. Joint venture, Business Co-operation Contract which foreign parties may be involved, percentage limits on capital contribution/ownership, as well as limitations on what sectors are available. In professional services, licensing is required and appears to be decided on an open ended discretionary basis, with the exception of set exclusions e.g. auditing and accounting firms, even with licensing are prohibited from providing services to Vietnamese companies. Certification is also required in some areas, such as engineering and architectural services. The criteria for certification may be of a higher threshold than in the case of domestic engineers etc. The requirement to hire Vietnamese only in certain positions e.g. tourist guides is also of concern. We would welcome comments from Viet Nam on the rationale for these restrictions and would encourage it to take a more liberal perspective.

Answer:

Viet Nam takes note of the above comments. Viet Nam is prepared to discuss them in more details in the context of services bilateral negotiations.

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

Question 147

US-Viet Nam Trade Agreement. Some Members showed their interest in the US-Viet Nam Trade Agreement, as described in the paragraphs 318 and 319 of the factual summary, and Viet Nam made clear in its response that it would abide by the MFN provisions specified in Article I of the GATT 1994. In this regard, as Article 6 in the Chapter I of the US-Viet Nam Trade Agreement stipulates the provisions regarding “Emergency Action on Imports”, please explain in detail how this article will be applied in relation to the other WTO Members after Viet Nam’s accession to the WTO. Please also make a similar explanation with regard to the other Articles in this bilateral trade agreement.

Answer:

Viet Nam reconfirms that it will comply with the MFN principle in Article I of GATT 1994. With respect to “Emergency Action on Imports”, Viet Nam does not accord any preferential treatment to the US within the meaning of Article I of GATT 1994. The Ordinance on Safeguards was formulated on WTO norms and standards, and took effect since 1 September 2002. An unofficial translation of this Ordinance is available through document WT/ACC/VNM/28.
