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17 and 19 September 2013**

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TRADE POLICY REVIEW

VIET NAM

MINUTES OF THE MEETING

Addendum

Chairperson: H.E. Mr. Joakim Reiter (Sweden)

This document contains the advance written questions and additional questions by WTO Members, and replies provided by Viet Nam.¹

**Organe d'examen des politiques commerciales
17 et 19 septembre 2013**

EXAMEN DES POLITIQUES COMMERCIALES

VIET NAM

COMPTE RENDU DE LA RÉUNION

Addendum

Président: S.E. M. Joakim Reiter (Suède)

Le présent document contient les questions écrites communiquées à l'avance par les Membres de l'OMC, leurs questions additionnelles, et les réponses fournies par le Viet Nam.¹

**Órgano de Examen de las Políticas Comerciales
17 y 19 de septiembre de 2013**

EXAMEN DE LAS POLÍTICAS COMERCIALES

VIET NAM

ACTA DE LA REUNIÓN

Addendum

Presidente: Excmo. Sr. Joakim Reiter (Suecia)

En el presente documento figuran las preguntas presentadas anticipadamente por escrito y las preguntas adicionales de los Miembros de la OMC, así como las respuestas facilitadas por Viet Nam.¹

¹ In English and Spanish only./En anglais et espagnol seulement./En inglés y español solamente.

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QUESTIONS FROM ARGENTINA

Informa de la Secretaría (WT/TPR/S/287)

3. POLÍTICAS Y PRÁCTICAS COMERCIALES, POR MEDIDAS

3.4 Medidas que afectan a la producción y al comercio

3.4.2 Normas, prescripciones técnicas y evaluación de la conformidad

3.4.2.2 Medidas sanitarias y fitosanitarias

En relación con las Circulares N°25/2010, N° 13/2011 y N° 05/2013, referidas a las condiciones sanitarias para el ingreso de productos frescos de origen animal y de origen vegetal,

¿Podría Vietnam brindar detalles sobre los requisitos exigidos para que un país sea habilitado para el ingreso al mercado vietnamita de productos de origen animal o para productos frescos de origen vegetal (Circulares N° 25/2010 y N° 13/2011)?

¿Cuáles son los trámites y procedimientos internos que deben cumplimentarse para dicha habilitación?

¿Cuál es el plazo para el reconocimiento de un país como elegible para la exportación de productos de origen animal, luego de la visita de inspección?

ANSWER: Circular 25/2010/TT-BNNPTNT, Circular 13/2011/TT-BNNPTNT and Circular 05/2013/TT-BNNPTNT were notified to WTO in Notification G/SPS/N/VNM/20 dated 30 June 2010, G/SPS/N/VNM/21 dated 4 August 2010 and G/SPS/N/VNM/34 dated 2 October 2012, respectively.

These regulations of importer registration conform to international practices. Since this is the first time Viet Nam implements this procedure, it may cause concerns from business operators. Understanding the issues and in order to keep the trade flow, Viet Nam has been facilitating registration by quick verification process and even by acceptance of temporary approval status for some countries with reasonable period of time to provide full information as required. We strongly recommend that any country who has problems with registration should contact Viet Nam National SPS Notification Authority and Enquiry Point or Department of Agro-forestry and Fishery Quality Assurance (NAFIQAD) for further guidance. List of countries approved and FAQ could also be found on official website of NAFIQAD at: <http://www.nafiqad.gov.vn/>.

QUESTIONS FROM ASEAN

GOVERNMENT'S REPORT

Page 10-11 and 20, Paragraph(s) 2.14 – 2.19 and 3.1

ASEAN notes the Vietnamese Government's recent efforts to help stabilize the macro-economy through the process of economic restructuring with the "*Master Plan on Economic Restructuring attached to change of growth model towards improvement of quality, efficiency and competitiveness for the period 2013-2020*", which among others, aims to create a system of sound, stable and long-term economic growth and calls for prudent monetary policy, restructuring of investment and the banking system.

1. Is Viet Nam able to provide further clarification, elaboration or share any of the intended programs and activities to achieve the goal of making Viet Nam a modern industrialized country by 2020?

ANSWER: The overall goal of the Master Plan for 2020 is to basically build a model of economic growth in depth, ensuring quality growth, improving the efficiency and competitiveness of the economy, which is in detail as follows:

- Improving economic institutions, creating a lever system to encourage rational, long-term stability in the market orientation to promote fair distribution, efficiently use social resources, enhance labor productivity, total factor productivity and competitiveness.
- Formulate and develop rational economic structure on the basis of improving and upgrading the level of development of industries, sectors, economic regions; strengthen high-tech industries to generate highly-added value to gradually replace the low value-added technology and become key economic sectors.
- Consolidate and develop internal resources and proactively integrate into the international community and strengthen national position on the international stage, firmly maintain political stability, national security, social order and safety.

The above goal is supported by the following points of view:

- Continue to renew the perception of the role of the State and the market; enhance the power of market mechanism to create incentives for transformation, distribution and use of production factors, meanwhile, strengthen the role of the State in supporting and creating opportunities for development.
- Harmonize between addressing important urgent issues and the basic, long-term issues, between growth, inflation and macroeconomic stability; between economic, cultural and social affairs and environmental protection.
- Promote the competitive advantage of the industries, economic regions, localities; highly consider the importance of agricultural, services, and tourism advantages; head towards building economic development structure with a focus on the core industries and products associated with the diversification of forms, lines of business to adapt to the socio-economic situation and climate change.
- Undertake economic restructuring associated with the administrative reform; improve quality of administrative services in the line businesses, at all levels, especially the local and grassroots level.
- Continue market opening and proactive international integration; implement strong domestic reform in order to create opportunities for attracting advocacy and active participation of citizens, enterprises, especially domestic and foreign private sectors.

In order to realize the Master Plan's goal, 10 groups of solutions are planned to implement as follows:

- Improve socialist-oriented market economy institution, enhance the competitiveness of the national business environment;
- Improve quality of planning, linking strategies to plans to raise the effectiveness of State management of planning;
- Innovate mechanisms and policies of capital mobilization, allocation and use;
- Restructure the system of financial institutions with the focus on commercial banks;
- Restructure state-owned enterprises, focusing on state-owned corporations and groups; improve the quality of private enterprises;
- Effectively implement programs to support the development of inter-industrial production clusters and boost the structural shift, improve efficiency and linkages among economic sectors;
- Develop agricultural production in a modern way by increasing scale, improving quality, value and sustainability combined with the new rural area construction;
- Promote the advantages of each region, and the transition into the appropriate economic structure with diverse business lines and levels of development;
- Improve the quality of human resources to create favorable conditions for economic restructuring, growth model transformation;
- Develop science and technology to push economic restructuring, associated with the growth model transformation.

QUESTIONS FROM AUSTRALIA

SECRETARIAT'S REPORT

2. TRADE POLICY REGIME: FRAMEWORK AND OBJECTIVES

2.4 Investment regime

Paragraph 2.35, p.39

The report notes that "foreign investors may apply for an investment certificate, which will also serve as a business registration certificate. This certificate should normally be granted within 15 days. In addition, "investment registration" applies to foreign investment projects valued at less than $\text{đ}300$ billion"

1. Could Viet Nam outline the procedures foreign investors need to comply with in order to obtain an investment certificate? Could Viet Nam outline the circumstances in which these certificates are not issued within 15 days? If a foreign investor fulfills all of the requirements for an investment certificate, can their application be declined?
2. In addition, could Viet Nam outline the procedures for "investment registration"? If a foreign investor fulfils all of the requirements for an investment registration, can their application be declined?

ANSWER: Investment projects that meet conditions of market access and fully comply with investment procedures stated in the Law on Investment will be granted with investment certificates. In addition, see the answer below:

Licensing authorities

The authorities who are authorized to issue investment certificate to Vietnamese and foreign-owned companies include: (i) provincial People's Committees and Management Boards of industrial and export processing zones.

Licensing procedure

Depending on the scheme and the sector of investment, different licensing and registration procedures will be applied, which are:

- i) Investment registration; or
- ii) Investment evaluation

Foreign investors investing in Vietnam for the first time must have an investment project and carry out either registration or evaluation procedures, in order for an investment certificate to be issued.

Investment registration

Foreign investment projects with a total invested capital of less than VND300 billion (approximately USD15 million) not falling in a conditional sector are subject to "investment registration" and foreign investors of such projects must carry out the procedures for investment registration in order to be granted an investment certificate. The investment certificate also serves as the business registration of the corporate entity.

Domestic investment projects with a total invested capital from VND15 billion to less than VND300 billion are also subject to "investment registration". Subject to a request of the local investor, the Licensing Authority will issue an investment certificate to such investor. Enterprises can subsequently register additional investment projects without the need to create a separate entity.

The procedure for "investment registration" is set out in Decree 108/2006/ND-CP. Accordingly, the investor must submit application documents for investment registration to the Licensing Authority. The Licensing Authority shall check the documents and issue the investment certificate to the investors within 15 working days of receiving the valid application.

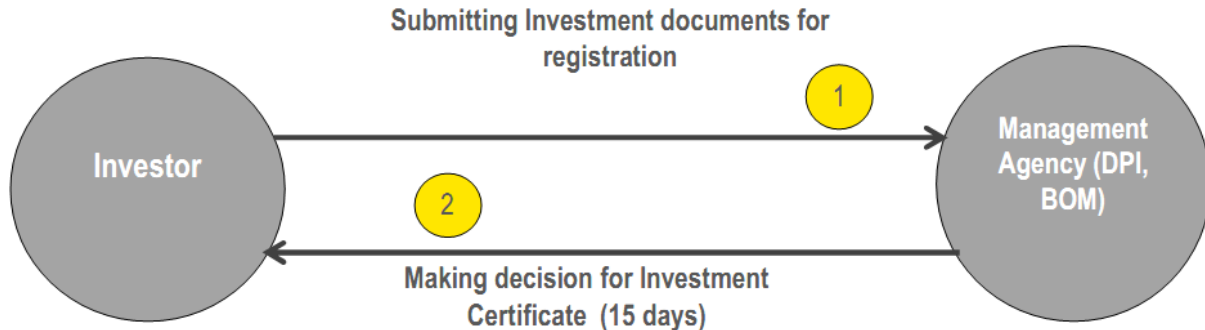


Chart 1: Investment Registration Procedures

Evaluation procedures

Any investment project with a total invested capital of VND300 billion (approximately USD15 million) or more or investment projects falling in conditional sectors must undergo "an investment evaluation" by the Licensing Authority and other relevant authorities. There are two different types of evaluation:

- i) Evaluation for investment projects regardless of total invested capital falling into conditional sectors; and
- ii) Evaluation for investment projects with total invested capital of VND300 billion or more that do not fall into conditional sectors.

For the evaluation of investment projects with total invested capital of VND 300 billion or more, along with the application documents, the applicant must also submit an "economic-technical explanation" of the investment project to the Licensing Authority. This covers the economic-technical explanatory statement, objectives, scale, location, investment capital, implementation schedule, land use needs, and technological and environmental solutions of the investment project.

For the evaluation of investment projects falling in conditional sectors, in addition to the application documents, the investor must also demonstrate compliance with requirements specific to that conditional sector.

When assessing the application documents, the Licensing Authority may liaise with other relevant Ministries and authorities in evaluating the proposed investment project. Items to be evaluated shall comprise:

- i) Compliance with master planning/zoning for technical infrastructure, master planning/zoning for land use, master planning for construction, master planning for utilization of minerals and other natural resources;
- ii) Land use requirements;
- iii) Project implementation schedule;
- iv) Environmental solutions.

The Law on Investment stipulates that the time-limit for evaluation of investment shall not exceed thirty (30) days from the date of receipt of a complete and valid file. In necessary cases, the above time-limit may be extended, but not beyond forty five (45) days.

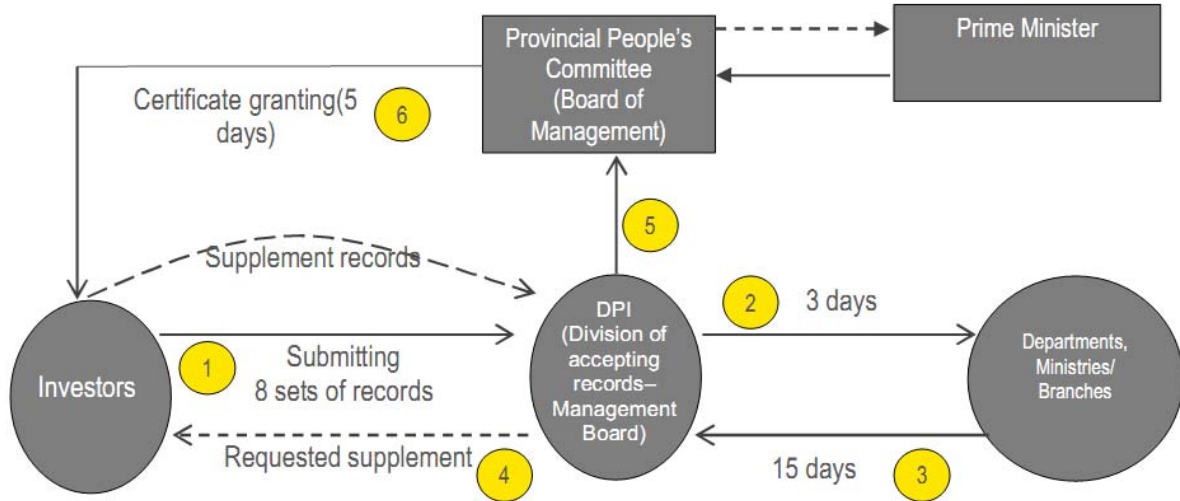


Chart 2: Investment Evaluation Procedures

Application dossier

In general, the following documents are required for the establishment of a 100% foreign-invested enterprises²:

- i) Request for the issuance of an investment certificate in the prescribed form
- ii) A draft charter of the company to be established
- iii) A list of investors in the prescribed format
- iv) A report of the financial capability of the investors
- v) An economic and technical explanation of the project "Feasibility Study"
- vi) An explanation of how the conditions will be satisfied
- vii) The investor's Certificate of Incorporation.

3. TRADE POLICIES AND PRACTICES BY MEASURE

3.2 Measures Directly Affecting Imports

3.2.1 Import procedures and requirements

Paragraph 3.11, p.43 and paragraph 3.143, p.83 (3.4.7 State trading, state-owned enterprises, and privatization/equitization)

3. Could Viet Nam clarify whether it maintains any state-trading enterprises – specifically for agriculture, fish and/or forest based goods – beyond those listed in its WTO accession package, where the importation of goods is reserved for these designated enterprises.

² Detailed guidance on application dossier is available in Decree 108/2006/ND-CP dated 22/9/2006.

ANSWER: Viet Nam's commitments on state trading enterprises which are set out in Table 5, Working Party's Report on Viet Nam's Accession to the WTO. Since the WTO accession, Viet Nam has not maintained state-trading enterprises for any products beyond those listed in this Table.

Paragraph 3.12, p.44

4. Australia notes that in adapting a more market-based mechanism, the government of Viet Nam has expanded trade in petroleum products beyond state-owned enterprises to other enterprises that meet certain conditions (Decree No. 84/2009/ND-CP of 15 October 2009). Australia would appreciate if Viet Nam could elaborate these conditions.

ANSWER: According to Article 7 of the Decree No. 84/2009/ND-CP dated 15 October 2009 of the Government, a trader who fully meets the following conditions may obtain a license for exporting and importing petrol and oil:

- Being lawfully established, having registered for petrol and oil trading in its business registration certificate;
- Having specialized wharves within Viet Nam's international port system, which are capable of receiving imported oil tankers or other means of transport with a capacity of at least seven thousand (7,000) tons under its ownership or co-ownership or on a lease for at least five (5) years;
- Having depots under its ownership or co-ownership or on a lease for at least five (5) years with a minimum capacity of fifteen thousand (15,000) cubic meters to receive imported petrol and oil from oil tankers and other means of transport;
- Having specialized means under its ownership or co-ownership or on a lease for at least five (5) years to transport petrol and oil to ensure petrol and oil supply to its distribution network;
- Having its own network for distributing petrol and oil with at least ten (10) retail shops under its ownership or co-ownership and a network of at least forty (40) agents;
- Exporters and importers of jet fuel are not required to have distribution networks under paragraph v) of this Article, but must have jet fuel filling equipment under their ownership or co-ownership.

Paragraph 3.15, p.44

5. Australia notes that passenger cars (9 seats and less) became subject to additional import requirements in May 2011. Viet Nam now requires such vehicles to be accompanied by a certificate or an assignment from the manufacturer, dealer or contracted agency, stating that the importer is the authorised importer or distributor. A warranty and maintenance certificate issued by the Ministry of Transportation of Viet Nam is also required. Australia would appreciate if Viet Nam could elaborate the rationale behind these additional import requirements.

ANSWER: The letter of appointment or an authorization document helps certify the legitimacy of the source of imported goods. This is one of measures to detect counterfeits and smuggling. The warranty and maintenance certificate issued by Ministry of Transportation of Viet Nam aims at protecting consumers' interests, traffic safety and guaranteeing responsibility of importers for quality of goods.

3.2.4 Tariff-rate quotas, tariff exemptions

Table 3.2 Tariff-rate quotas, 2010-12, p.48

Table 3.2 indicates that salt quotas decreased from 150,000 tonnes for the initial quota to 102,000 tonnes in 2012.

6. Could Viet Nam explain the decrease in salt quota during this period, when the annual growth rate for quota volume is 5%?

ANSWER: The volume of salt tariff quotas announced in 2012 was based on registered import demands of traders. On the basis of import performance of the 102,000 tonnes and additional demands registered by traders, an additional volume of quota would be announced. However, in 2012, no additional demand registered, so the volume of 102,000 tonnes of salt tariff quotas was unchanged.

3.2.6 Internal taxes

Paragraph 3.31, p.50

7. Australia notes that Viet Nam levies excise taxes on certain goods considered luxuries or potentially harmful products including alcohol, pursuant to the Law on Special Consumption Tax of 30 June 1990. Australia further notes that for imports, the special consumption tax is levied on the duty-inclusive import price. Australia would appreciate if Viet Nam could elaborate the rationale behind the use of the duty-inclusive import price for this levy, with a tax rate of 45% ad valorem for distilled spirits and beer (**Paragraph 3.32, p. 51**).

ANSWER: The purpose of using of duty-inclusive import price for calculating special consumption tax for imported goods is to ensure non-discriminatory treatment between imported and domestically produced product as the price of domestically produced product is also duty-inclusive regarding relevant imported materials and/or components, if any, used in its production which then be subject to special consumption tax. Furthermore, this calculation method is considered as in compatibility with international practices in some other countries such as Chile, Paraguay, Peru, etc.

3.2.7 Import prohibitions, restrictions, and licensing

Paragraph 3.42, p.56

Automatic import licensing was applied to a range of fresh products and consumer goods until 26/9/2012, but lifted temporarily. However certain steel products are still subject to 'automatic import licensing' in accordance with Ministry of Industry and Trade's (MOIT) Circular 23/2012/TT-BTC of 7/8/2012. Importers have expressed concerns about the difficulties of complying with documentation requirements and delays in getting licenses.

It is our view that the system does not meet the objective of "gathering detailed statistics and trade data for import assessment" which could be done via another channel (such as Customs).

8. Will Viet Nam consider removing automatic import licensing altogether?

ANSWER: The objective of the Circular No. 23/2012/TT-BCT of the Ministry of Industry and Trade of Vietnam is to gather data of total import quantities and value of steel products for analysis and assessment. As the automatic import licensing procedure under the Circular No. 23 does not restrict import quantity and is consistent with the Agreement on Import Licensing Procedures of WTO, Viet Nam has no plan to remove this Circular.

Paragraph 3.44, p.57

Viet Nam maintains a long list of "non-essential" imported commodities and consumer foods not encouraged for import. The State Bank of Viet Nam does not encourage the provision of foreign currency to finance imports of the listed items.

9. What is the rationale for foreign exchange restrictions on imports and how does it fit with Viet Nam's trade liberalisation commitments?
10. How is this list established?

11. Could Viet Nam explain why this list was expanded in 2011 to discourage items such live animals, dairy products, sugar confectionary, fish and crustaceans, and table salt?

ANSWER: From 8 November 2005, Viet Nam began to accept the obligations under the Article VIII of the IMF Regulations regarding to the liberalization of current account transactions. Currently, regulations governing foreign exchange in Viet Nam such as the Ordinance on Foreign Exchange and Decree No.160/2006/ND-CP are important legal bases asserting the liberalization of current account transactions and convertibility of the current accounts. Viet Nam affirms its full compliance with commitments on liberalization of current account transactions.

In 2010, a series of policy measures were implemented for the purposes of macroeconomic stability, inflation control, and social welfare improvement. The list of the non-essential consumer goods not encouraged to import issued by the Ministry of Industry and Trade was only used as a recommendation for credit institutions when providing loans in the situation of limited ability in foreign currency. However, please note that credit institutions can still sell foreign currency to importers for the importation of the listed items. This is one of the solutions to reduce the phenomenon of dollarization in Viet Nam's economy, transferring from the lending-borrowing relationship to the buying-selling relationship in foreign currencies. It is clearly stipulated in the Law on Credit Institutions 2010 that commercial banks and credit institutions have full rights and are self-responsible for their business decisions and activities. In addition, according to the Law, all transactions on payment and money transfers for current transactions are done freely, whereby residents can buy foreign currency from credit institutions to pay for the importations of goods and services.

3.2.8 Customs valuation

Paragraph 3.47, p.57

Viet Nam uses its customs valuation database as a risk assessment tool. The current valuation database (issued together with Official Letter 3286/TCHQ-TXNK dated 14/6/2013 by the General Department of Customs) is expressed in USD and covers many fresh products and consumer goods.

12. What is the rationale for including fresh products in the database?
13. How frequently is the valuation database updated? How are factors such as the exchange rate, price of fresh fruit (highly variable depending on harvest season timing), and quality differentials taken into account in developing the database?
14. What is the process for the importer to challenge the lower price listed in the database?

ANSWER: Criteria for selecting products in the database include: high import duty, large import value, high risk profile of fraudulent customs valuation. Therefore, fresh products or any other products which meet above criteria will be included in the price database.

The price database are updated, adjusted frequently in line with the market change. Thus, even if the prices of fresh fruits could be subject to seasonal change, quality's difference they are still subject to frequent update in the database. Updated price data uniformly presented in term of USD as its currency unit. If the products' prices are charged in other currencies, they will be converted into the USD. Therefore, the exchange rate could not affect the database.

If an importer wants to challenge a valuation, they should enter into a consultation with the customs authorities. This consultation could help to determine the transaction value for custom duty calculation which must be in accordance with the procedures and methods of the CVA Agreement.

Paragraph 3.49, p.58

15. Australia notes that according to Vietnamese businesses, the application of HS Codes is not always uniform across customs offices, which means that the same good could be subject to different duty depending on classification matters. Australia further notes that

Viet Nam Customs is currently constructing a database for unified inspection and classification of certain types of goods. Australia would appreciate if Viet Nam could advise when it plans to complete this database.

ANSWER: In order to strengthen state management and ensure nation-wide uniformity in product classification, the Director General of General Department of Customs has promulgated Decision 1266/QD-TCHQ dated 22/6/2012 approving "Master Plan toward establishment Information Management System of Nomenclature, Tariff Schedule and Classification (MHS)". In accordance with this plan, the IMS of Nomenclature, Tariff Schedule and Classification (MHSv1.1) has been established and put to use by customs office since September 2013.

3.2.9 Rules of origin

Paragraph 3.51, p.58

Importers of Australian goods have expressed concerns that in a number of cases, Australian certificates of origin (COOs) under AANZFTA have not been accepted by Customs officers. This problem might come from some Customs officers in charge not being fully aware of implementation procedures, or the Customs database of registered COO forms not being up-to-date.

16. How does Viet Nam ensure that traders can fully enjoy benefits from reduced tariffs under various FTAs?

ANSWER: Viet Nam always adheres to its FTA commitment to ensure that traders can enjoy benefits from trade liberalization. In reality, there are several cases where preferential C/Os are suspended due to false authenticity or erroneous nature. In such cases, Vietnamese relevant authorities proactively cooperate with the C/O issuing bodies to verify the authenticity of the granted C/Os to address the problem.

3.4.2.1 Technical barriers to trade (TBT)

Paragraph 3.85, p.66

Decree 94 on liquor production and trade, effective from 1 January 2013, introduced new measures affecting liquor trade. It introduced a complex liquor trading licensing system (distribution, wholesale or retail sale), and put quantitative restrictions on the number of eligible licenses based on population size. Each trader can only apply for one of three types of licenses (e.g. importers of wine cannot sell liquor to retailers or directly to consumers).

17. What is the justification for the different treatment in the way imported and locally produced liquor is distributed?
18. What is the justification for quantitative restrictions on the number of licenses distributing imported liquor?

There is no specific provision under Decree 94 provides for different treatment for imported and locally produced liquor. Distributors import quantity they desire. From experiences of many countries, we are developing trade policies for alcohol in a manner consistent with the WTO rules taking into account social and health care aspects.

There is no limitation for foreign business participating in production (then apply for a license of production) and distribution (then apply for a distribution license) of liquor in Viet Nam. The producers (local or foreign invested) are limited to distribute the liquors they produce only in their own premises in accordance with the Commercial Law and common commercial practices. If otherwise, they must apply for a distribution license separately. The distributors/importers don't need to comply with such requirement.

The restriction on the number of licenses distributing imported alcohol based on population size is one of the measures under a long term plan to reduce negative effects of alcohol.

3.4.2 Standards, technical requirements, and conformity assessment

3.4.2.1 Technical barriers to trade

Paragraph 3.92, p.68

19. Australia notes that draft national standards are prepared by technical committees through the Viet Nam Standards and Quality Institute (VSQI) in Standards, Metrology and Quality (STAMEQ), under the Ministry of Science and Technology. Australia further notes that at the end of 2012, there were 116 national standards technical committees and 52 sub-committees. Australia would appreciate if Viet Nam could explain the role of these committees and sub-committees and if it has plans to simplify the structure of these committees.

ANSWER: According to the Decision No 22/2007/QĐ-BKHCHN of the Minister of Science and Technology dated 28/9/2007, the technical committees play the role of proposing strategy, plans, developing Vietnamese standards, providing comments on related international, regional, foreign standards, co-operating with other related technical committees in standardization activities, participating to the appraisal of draft Vietnamese standards developed by other ministries. Since technical committees and sub-committees operate in consistent with ISO/IEC Directives, Viet Nam has not seen the necessity to simplify the structure of these committees.

3.4.2.2 Sanitary and phyto sanitary measures (SPS)

Paragraph 3.102. p.72

Australia welcomes the announcement that Viet Nam will lift the ban on imports of white offal on 1 September 2013, subject to acceptance of various certificates from trading partners.

20. When does Viet Nam intend to notify this to the WTO?

ANSWER: The halting of offal importation in 2010 was in response to public pressure after the competent authorities detected several consignments that violated Viet Nam's regulations on food safety. The temporary stop aimed at reviewing risk management, strengthening monitoring system and capacity of Viet Nam authorities. Sanitary and Phytosanitary Measures applies to offal pursuant to Circular 25/2010/TT-BNNPTNT that has been notified to WTO in Notification G/SPS/N/VNM/20 dated 30 June 2010. However, to ensure the transparency, Ministry of Agriculture and Rural Development had sent a Verbal Note to inform all Diplomatic Missions in Viet Nam about the re-open decision.

Australia notes that Viet Nam announced that white offal will be allowed to enter Viet Nam only via three seaports, Hai Phong, Da Nang and Ho Chi Minh City.

21. What is the justification for restricting imports of white offal to only three seaports? [Note: entry of red offal – hearts/liver/kidneys is not restricted.]

ANSWER: The decision to resume importation in 3 ports is based on statistics and to ensure the traders' benefits. In accordance with sample taking regulations, consignments must be opened for inspection, therefore, appropriate facilities should be in place to preserve quality of the imported goods. After examining technical infrastructure, only 3 ports of Hai Phong, Da Nang and Ho Chi Minh City can meet the facilities requirements. In addition, importation statistic shows that imported offal mainly goes through those 3 ports.

4. TRADE POLICIES BY SECTOR

4.2 Agriculture

4.2.1 Features

Paragraph 4.9, p.96

22. Could Viet Nam clarify whether grazing land for livestock is represented in the 10.1 million hectare estimate of cropland, or in the 15.4 million hectares of forestry, within the figures provided in this paragraph?

ANSWER: Grazing land for livestock is presented in 10.1 million hectare estimate of cropland.

4.2.2 Trade

Table 4.2, p.99

Table 4.2 highlights a sharp increase in sugar exports from 2,000 tonnes in 2010 to 276,000 tonnes in 2011.

23. Could Viet Nam explain why there has been a sharp increase in exports over this period?

ANSWER: The increase of sugar-cane exports in 2010-2011 resulted from good weather.

4.2.3.1 Trade policies

Paragraphs 4.25 and 4.27, p.101

Section 4.27 states that Viet Nam does not control exports of any agricultural products but section 4.25 states that rice exporters require a certificate from the Ministry of Industry and Trade.

24. Could Viet Nam please clarify which authorities have control over the exports of agricultural products?

ANSWER: Viet Nam does not maintain export licensing regime on agricultural products. Any traders who qualify for the conditions stipulated in the Decree No. 109/2010/ND-CP of the Government can be granted with certificate by the Ministry of Industry and Trade to export rice.

4.3 Fisheries

4.3.1 Features

Paragraph 4.41, p.103

25. Australia notes that there appears to be a typographical error in this section. US\$6,255 billion should perhaps read US\$6,255 million?

ANSWER: This is typing error. The correct number is US\$6,255 million.

Table 4.6 and paragraph 4.47, p.105

Australia notes that the report indicates a significant increase in marine capture fisheries production between 2005 and 2011 with significant increases also in the number of offshore vessels and the number of larger vessels. Catch has exceeded maximum sustainable yields.

Paragraph 4.58 (p.107) outlines the broad management elements of Viet Nam's fisheries management.

26. Could Viet Nam clarify whether there are constraints or limits on the number of vessels for marine capture fishing and what effort it is making to ensure that its marine capture fishing sector operates within maximum sustainable yields?

ANSWER: For the purpose of ensuring marine capture fishing with maximum sustainable yields, the Prime Minister issued the Decision No. 1445/QĐ-TTg dated 16/8/2013 on the approval of the masterplan for the fisheries development by 2020 with a vision toward 2030, in which the number of coastal vessels is targeted to reduce by 12% in 2020 and expected a further reduction to 95,000 vessels by 2030.

Paragraph 4.64 notes that the government has provided temporary support to a number of sectors, including the fisheries sector, through fuel subsidies for fishing vessels.

27. Could Viet Nam clarify whether fuel subsidies for fishing vessels continue to be available? Are these available for all fishing vessels, including those engaged in marine capture fishing?

ANSWER: The increase of oil price in the years 2007 and 2008 directly affected the lives of poor coastal fishermen. The Prime Minister has issued Decision No. 289/QD-TTg promulgating policies in order to help them overcome difficulties. Among these policies, fuel subsidies are considered as necessary short term measures to address the livelihood of the poor coastal fishermen.

4.3.3 Policies

General question on fisheries policies

28. Is Viet Nam moving to ratify relevant UN conventions such as the FAO Port State Measures Agreement, towards meeting its international obligations to cooperate on fisheries management? Australia welcomes a summary of the instruments that Viet Nam has become a party to in this context.

ANSWER: Viet Nam is considering to join the Convention on the Conservation and Management of Straddling Fish Stocks and Highly Migratory Fish Stocks under the United Nations Convention on the Law of the Sea.

4.4 Mining and Energy

4.4.1 Mining

Paragraph 4.67, p.109

29. What measures is Viet Nam putting in place to attract investors to the mining sector?
30. What measures is Viet Nam considering for the protection of investors already in the mining sector in Viet Nam?

ANSWER: In 2005, the National Assembly passed the Law on Investment. Accordingly, the foreign and domestic investors are treated equally.

In term of mining industry, this sector is categorized as a conditional investment form. Therefore, a permit/license from competent authorities is requested.

Regarding measures, investors are expected to invest with high technologies and environmentally friendly technologies as regulated at Item 6, Article 3, Law on Minerals and Item 4, Article 3, Law on Minerals 2010, Item 1, Article 34 specifies organizations and individuals involved in minerals and mining activities.

Viet Nam will explore additional possibilities in encouraging foreign investors doing business in this sector.

4.6 Services

4.6.1 Features

Paragraph 4.115, p.129

The report states that the main constraint to Viet Nam's growth is "the lack of adequate manpower with tertiary education and appropriate skill sets." Australia notes that Viet Nam made GATS commitments in relation to higher (CPC 923), adult (CPC 924) and other (CPC 929) education services for the technical, natural sciences and technology, business administration and business studies, economics, accounting, international law and language training fields.

31. Could Viet Nam outline whether the steps it is taking to overcome this constraint on growth include further opening of the higher, adult and other education sectors to foreign service suppliers?

ANSWER: Viet Nam has made further commitments to education services in the FTA between ASEAN and Australia and New Zealand (AANZFTA).

4.6.2 Overall commitments under the General Agreement on Trade in Services

Paragraph 4.118, p.129

Under Decree 46 dated 17/6/2011 on recruitment and management of foreign employees in Viet Nam, exemptions from work permits are available for intra-corporate transferees working for companies in eleven services sectors incorporated under Viet Nam's Schedule for Specific Commitments in Services. However, this exemption has not been implemented due to a lack of implementing regulations from the Ministry of Industry and Trade.

32. When will Viet Nam introduce the implementing regulations to enable foreign labour work permit exemptions for intra-corporate transferees as announced in Decree 46 in July 2011?

ANSWER: Decree No.46/2011/ND-CP was replaced by Decree No. 102/2013/ND-CP detailing a number of articles of the Labour Code on employment of foreigners working in Viet Nam Pursuant to the new Decree, provisions on conditions, licensing procedures as well as deportation for labor workers who are foreign citizens working in Viet Nam. Under this Decree, the reissuance of work permits is done when work permits are expired. The extension of work permits is not stipulated under this decree.

4.6.5 Communications

4.6.5.1 Telecommunications

Paragraph 4.138, p.138

The report notes that Viet Nam's telecommunications market is "gradually opening, in line with Viet Nam's GATS commitments". Paragraph 4.141 (page 139) further notes that "November 2009 Law on Telecommunications and Radio Frequency...constitutes a framework for telecommunications regulations, with many specific implementing rules and regulations to be developed in the future."

33. Could Viet Nam please provide an update on the development of any rules and regulations under this Law, including any potential new opportunities for trade and investment by foreign firms and consideration of the creation of an independent regulatory body?

ANSWER: After Law on Telecommunications is ratified by Viet Nam's National Assembly, Viet Nam promulgated Decree No.25/2011/ND-CP and a number of circulars guiding on the implementation of some content in Law on Telecommunications (including Circular No.08/2013/TT-BTTTT stipulating the quality management on telecommunication services, Circular No.02/2013/TT-BTTTT stipulating list of telecommunications services subject to quality management, Circular No.18/2012/TT-BTTTT on list of telecommunications enterprises, group of telecommunications enterprises with dominant position on market for the important telecommunication services, Circular No.05/2012/TT-BTTTT classifying telecommunication services, Circular No.14/2012/TT-BTTTT stipulating on charges of the ground mobile communication services, etc.).

Law on Telecommunications No. 41/2009/QH12 dated 23/11/2009 provides for telecommunications policies as follows: creating conditions for organizations and individuals of all economic sectors to invest in telecommunications and conduct telecommunications business with a view to rapidly developing and modernizing telecommunications infrastructure, diversifying telecommunications services and meeting requirements of socio-economic development, contributing to the national defence and security maintenance, and raising the people's living standards, assuring an environment of fair competition in telecommunications activities.

Under Decree No. 25/2011/ND-CP stipulates that foreign investors are allowed to invest and trade telecommunication services in the form of direct investment, indirect investment in accordance with the Telecommunication Law and the law on investment. In case of direct investment to provide telecommunication services without network infrastructure, foreign investors are allowed

to jointly venture or cooperate the business on the basis of contracts with enterprises established in Viet Nam. Where the investment is to provide telecommunication services with network infrastructure, foreign investors are allowed to jointly venture or cooperate the trading on the basis of contracts with telecommunication enterprises have been licensed to establish a telecommunication network in Viet Nam.

The Viet Nam Telecommunications Authority (VNTA) is an agency within the Ministry of Information and Communications, performing the consultative functions to Minister of Information and Communications on the state management and implementation of such functions in the field of telecommunication nationwide. VNTA is the management agency specialized in telecommunications, which was established under Decision No. 35/2011/QD-TTg dated 27 June, 2011.

4.6.6 Transport

4.6.6.2 Air Transport

Paragraph 4.167, p.147

The report notes that self-handling, mutual handling, and/or third-party handling are allowed without restriction at Viet Nam's major airports.

Australia notes that Viet Nam's GATS commitments on air transport cover only sales and marketing, computer reservation systems and maintenance and repair of aircraft.

34. Given Viet Nam's open regulatory regime in self-handling, mutual handling and/or third party handling, could Viet Nam provide information on the extent of foreign participation in these areas?

ANSWER: Self-handling, mutual handling and/or third-party handling are allowed without any restrictions at major airports of Viet Nam. However, foreign airlines are entitled to self-services only. A number of domestic providers are limited to two in maximum due to airports infrastructure constraint.

Paragraph 4.168, p.167-8

The report references an IATA report that recommends "Viet Nam's aviation industry policy ... focus on global standard technology for air traffic management (i.e. ADS-B and performance-based navigation (PBN)), more cost-efficient airports and air navigation services".

34. Could Viet Nam please provide an update on its consideration of the recommendations of this report, including whether it is inclined to open its regulatory regime for services ancillary to air transport, including airport operation services?

ANSWER: Viet Nam does not have plan to change its current policy on the airport operation services.

QUESTIONS FROM BRAZIL**SECRETARIAT'S REPORT****3. TRADE POLICIES AND PRACTICES BY MEASURE****Section 3.4.2.7 - Technical Barriers to Trade****Pages 67-77, paragraphs 3.85**

Question 1: The intensification of livestock operations has benefited production efficiency but has introduced major environmental issues, becoming a concern in both developed and developing countries. The collection and recycling of inedible animal by-products from the food industry that would otherwise lead to environmental contamination, and the respective conversion of waste into rich raw material for the manufacture of various products has proven to be an efficient tool in attenuating environmental and health issues all over the world. To duly accomplish this, it is necessary to count with strict controls in compliance with international regulations.

- a) Please inform which are the policies in force in Viet Nam to recycled animal by-products, such as meat and bone flours, blood meals, meat and bones destined for animal nutrition (HS 2301,10), if any;
- b) Please indicate the technical and/or phytosanitary regulations applicable for the assessment of recycled animal by-products in Viet Nam, if any;
- c) Please inform whether these technical and/or phytosanitary regulations have been notified to the TBT Committee or to the SPS Committee. If so, please inform the date of notification and the document number of reference of the notifications submitted.

Page 74, paragraph 3.108

"Under Prime Minister's Decision No, 147/2008/QD-TTg, to meet its obligations under the SPS Agreement, Viet Nam is to harmonize its food hygiene and safety and sanitary and Phytosanitary standards with those of Codex Alimentarius, the OIE, and the IPPC. This Decision also sets out objectives for risk assessment, control measures, and institutional capacity, and states that the same standard should be used for exports and domestic consumption."

Question 2: According to the World Organization for Animal Health ("OIE") Brazil is recognized as having a negligible Bovine Spongiform Encephalopathy ("BSE") risk, and that so far there is no reason for suspending Brazil's BSE risk status (information online at:). Additionally, it is in Brazil mandatory to notify occurrences of BSE to the competent domestic authorities, and in accordance with OIE's recommendations, the country maintains a surveillance program for BSE. Nevertheless, Viet Nam maintains restrictions to Brazil's exports sales of bone flours, blood meals, meat and bones destined for animal nutrition (HS 2301.10). In this sense, Brazil would very much appreciate if Viet Nam could explain the reasoning behind such restrictions.

ANSWER: Decision 33/1998/QD-BNN of Ministry of Agriculture and Rural development dated 24/2/1998 relating to the suspension of import of animal by-product from certain countries has been issued for long time ago due to a proved critical threat to human and animal health. Viet Nam is reviewing this legal document with reference to recommendation from OIE and will notify to the WTO accordingly.

QUESTIONS FROM CANADA

Report by the Secretariat WT/TPR/S/287

Part I. Economic Environment: (4) Key Policy Developments; (2) Structural Policies: paragraph 1.17, page 23:

It is noted that the state sector remains a relatively large part of Viet Nam's economy, accounting for 33% of GDP in 2011. Further, the trend towards "equitization", divestment, mergers, acquisitions, and liquidation was reversed in 2009 with the addition of 128 new wholly state-owned enterprises. This pattern persisted into 2010 and 2011. It is further noted that although Viet Nam plans to restructure the 1,309 state-owned enterprises currently 100% owned by the state, the government plans to maintain a controlling stake in all but 44 enterprises. This is in addition to the 2,000 enterprises in which the government currently holds a controlling stake.

1. Noting that Viet Nam recently adopted its "Master Plan on Economic Restructuring attached to change of growth model towards improvement of quality, efficiency and competitiveness for the period 2013-2020," can Viet Nam please elaborate on its plans to reduce state involvement in the economy? Specifically, how does Viet Nam consider that continuing to maintain a controlling stake in the vast majority of state-owned enterprises to be a restructuring of the SOE sector?

ANSWER: One of the main focuses of the "Master Plan on Economic Restructuring attached to change of growth model towards improvement of quality, efficiency and competitiveness for the period 2013-2020" is the restructuring of State-owned enterprises, especially economic groups and corporations; improving the quality of private enterprises which is as follows:

- a) Strongly and consistently implementing the restructuring of State-owned enterprises

The Ministry of Finance shall be responsible for coordinating with other Ministries, agencies and localities:

- To hasten Ministries, agencies, localities, economic corporations and groups to fully realize Decision 929/QD-TTg dated July 17, 2012 of the Prime Minister on approving the Master Plan for restructuring State-owned enterprises, especially economic groups and corporations in the 2011-2015 period.
- To publicize general information regarding investment activities of the State ownership representatives and operations of State-owned enterprises every year from 2013 on the websites of the Ministry of Finance, and other relevant Ministries, agencies and localities.
- To develop an annual Report on "Real situation of using, protecting and developing State capital and State-owned properties in enterprises", then submit them to the Government, the National Assembly and organize the publication from 2013 in accordance with the Enterprise Law.

Ministries, agencies and localities, based on their assigned functions and obligations, shall fully and strictly implement Decision No. 929/QD-TTg dated July 17, 2012 of the Prime Minister approving the Project "restructuring State-owned enterprises, focusing on economic corporations and groups in the 2011-2015 period," Decision No. 704/QD-TTg dated June 11, 2012 of the Prime Minister approving the Project on renovating market-based corporate administration.

Corporations, groups and other State-owned enterprise, regarding their specific requirements and conditions, shall be proactive in designing and realizing their own restructuring plans in order to raise the efficiency and productivity of the use of capital and properties as well as the competitiveness of businesses and products in the following aspects:

- Restructuring business and investment lines, focusing on key domains that they have competitive advantages.

- Restructuring capital and properties, consolidating and enhancing corporate financial sustainability, effectively coping with adverse market changes.
 - Restructuring and renewing production processes, renovating and diversifying products, developing product brands.
 - Restructuring, renovating management organization, renovating and strengthening the efficiency of internal administration.
 - Restructuring markets while firmly maintaining competitive edge in traditional markets, and at the same time developing new ones and taking full advantage of the domestic market.
 - Training and developing human resources in favor of restructuring.
- b) Realizing national programs on developing and improving the quality of private enterprises

The Ministry of Planning and Investment, and other Ministries, agencies and localities, based on their assigned functions and obligations, shall enhance instructions to ensure effective implementation of national development programs to improve the quality of private enterprises, including: the Program on supporting the renovation and improvement of technological capacity for small and medium-sized enterprises; the program on training and improving management capacity for business owners and managers; the Program on supporting the improvement of corporate administration efficiency; the Program on supporting the quality improvement of products (through services to disseminate, introduce and instruct the application of quality standards and requirements, testing, appraisal and product quality certification services...); the Program on supporting the connectivity between businesses, universities, research institutes, organizations providing business development services for small and medium-sized enterprises, etc.

Ministries, agencies and localities shall enhance directions to ensure effective implementation of the Campaign "Vietnamese people prioritize using made-in-Viet Nam goods"; raise the public's sense of consumption of made-in-Viet Nam goods and support small and medium-sized enterprises in commodity consumption.

c) Renovating corporate development model

To gradually renovate and transform the corporate development model based on the pillars: market and target products, science and technology, human resources, capital and land.

Part III. Trade Policies And Practices By Measure: (3.2) Measures Directly Affecting Imports; (3.2.2) Ordinary Customs Duties: paragraphs 3.21, Page 46-47:

According to the Secretariat Report, a number of tariff increases since 2008 seem primarily motivated by a willingness to afford higher protection to certain domestic sectors, e.g. to manufacturers of motor vehicles, meat producers, and the local steel industry. Although tariff increases appear to have been within the limits set by Viet Nam 's tariff commitments in the WTO, frequent changes in the applied tariff introduce uncertainty and may undermine the predictability of WTO Members' access to the Vietnamese market.

2. Could Viet Nam provide more details as to which agriculture tariff lines (or more generally, which agriculture products) have seen their applied tariffs raised since 2008?

ANSWER: Preferential import tariffs are published on the website of the Ministry of Finance (<http://www.mof.gov.vn>). Please refer to this website for more information about the agricultural tariff lines (agricultural products) that have increased rates since 2008.

3. Does Viet Nam intend to increase the applied tariffs on more agriculture lines in the foreseeable future?
4. Could Viet Nam provide more information as to the factors being taken into account when deciding which lines are to see an increase in applied tariffs?

ANSWER: The increase/decrease in MFN tariffs of each particular item is based on many factors, including tariff binding on Viet Nam's commitment to WTO, current MFN tariffs, production capacity or the relationship between domestic supply and demand. Therefore, the increase/decrease in import tariffs of each item will be based on the actual situation and are made according to the schedule of tariff reductions under WTO's commitments.

5. Could Viet Nam say if it intends to stabilize the levels of applied tariffs in order to improve certainty and predictability in its import regime in the near future?

ANSWER: The Law on drafting and promulgating legal normative documents requires that a draft legal document (in particular on import and export tariffs) must be circulated to related ministries and agencies for comments. In addition, the draft must be published on the website of the Ministry of Finance for a period of 60 days for organizations and individuals to comments. The law also requires each measure, while being published on the official Gazette, to specify a reasonable period between the date when such regulation are made publicly available and the date when they enter into force so that the stakeholders can be acquainted with it. All WTO members, through its diplomatic missions and trade representatives in Viet Nam, can be able to take part in providing comments to any proposed measures of their concern. In so doing, we believe that certainty and predictability of the entire policy making process, including the import regime, can be maintained and improved, in accordance with WTO's guiding principles of transparency and predictability.

Part III. Trade Policies And Practices By Measure: (3.2) Measures Directly Affecting Imports; (3.2.4) Tariff-Rate Quotas, Tariff Exemptions: Table 3.2, Page 48:

In the table provided in the Secretariat Report, there is a sharp drop in the level of allocation for the TRQ for Cane Sugar, Beet Sugar and Other Sugar between 2011 and 2012 (250,000 tonnes to 70,000 tonnes)

6. Could Viet Nam provide an explanation as to why the allocation level for the sugar TRQ decreased significantly?

ANSWER: According to the commitments in WTO, the volume of tariff quotas has to be announced since the first year of accession – 2007, with the minimum volume of 55,000 tonnes (quotas growth rate of 5% per year). Therefore, the announced volumes of 250,000 tonnes in 2011 and 70,000 tonnes in 2012 are completely in line with the commitments.

The higher announced volume in 2011 (67,000 tonnes of minimum announced volume) were based on import demands of traders. The announcements of TRQ for cane sugar, beet sugar and other sugar in 2011 and 2012 fully comply with Viet Nam's commitments in WTO.

Part III. Trade Policies and Practices by Measure: (3.3) Measures Directly Affecting Exports; (3.3.3) Export Restrictions: paragraph 3.67, pages 62-63:

The Report notes that Viet Nam enforces export controls via international treaties as well as undertaking export/import management of various agricultural, fisheries and forestry products. In view of this limited list:

7. Could Viet Nam address the measures it takes to ensure the free flow of non-managed goods and commodities to its trading partners?

ANSWER: Viet Nam does not maintain any measures to control exportation of any agricultural products. Agricultural products are subject to a free regime of exportation.

For further information, please refer to Circular No. 08/2011/TT_BNNPTNT guiding Decree No. 12/2006/ND-CP of January 23, 2006 detailing the Commercial Law regarding international goods trading and goods agency, trading, processing and transit with foreign parties in the agriculture, forestry and fisheries sector. Articles 4 and 5 of the Circular are as follows:

Article 4. Principles of implementation of regulations on animal and plant quarantine; food quality and safety inspection of animals, plants and goods originated from imported animals and plants

1. Prior to customs clearance, imports subject to quarantine of animals, seafood, animal products and aquatic products must comply with the Ministry of Agriculture and Rural Development's regulations promulgating the list of objects of quarantine of animals, seafood, animal products and aquatic products; the lists of animals; seafood; animal products; and aquatic products subject to quarantine; and processes and procedures for quarantine of animals, seafood, animal products and aquatic products, and veterinary hygiene inspection.
2. Prior to customs clearance, imports on the list of objects of plant quarantine must comply with the Ministry of Agriculture and Rural Development's regulations on announcement of the list of objects subject to plant quarantine of Viet Nam; the list of objects of plant quarantine of Viet Nam; and the list of objects subject to plant quarantine and epidemic risk analysis prior to import into Viet Nam, and on procedures for inspection of objects and compilation of plant quarantine dossiers.
3. When being imported into Viet Nam, goods subject to specialized management by the Ministry of Agriculture and Rural Development must comply with the Ministry of Agriculture and Rural Development's current regulations on food quality and safety inspection.
4. For a border gate without an animal and plant quarantine agency, customs clearance for goods shall be carried out under the mechanism of pre-customs clearance registration and post-customs clearance inspection. The quarantine agency may conduct quarantine concurrently with customs inspection or after customs clearance of goods at the time and place stated in the written quarantine registration.
5. For goods subject to food quality and safety inspection, the mechanism of pre-customs clearance registration and post-customs clearance inspection applies.
6. After customs procedures are cleared, goods that fail to meet quarantine and food quality and safety requirements must be re-exported.

Article 5. Principles of import pending addition to the list of imports freed from licensing

1. For goods outside the list of imports freed from licensing, traders may import them without a permit according to their needs with unlimited quantity and value after their testing or risk assessment results are recognized in writing by specialized management agencies of the Ministry of Agriculture and Rural Development.
2. Specialized management agencies of the Ministry of Agriculture and Rural Development shall publish documents recognizing testing or risk assessment results of goods and the list of those goods on their websites and the Ministry of Agriculture and Rural Development's website at <http://www.omard.gov.vn> and send them to customs agencies.
3. Based on testing or risk assessment results, the Ministry of Agriculture and Rural Development shall add goods to corresponding lists.

Part III. Trade Policies and Practices by Measure: (4) Measures Affecting Production and Trade; (1) Subsidies: paragraph 3.77, page 65:

It is noted that Viet Nam did not provide subsidy notifications until March 2013, when it notified details of support programmes applied in 2005-07. The Secretariat has noted difficulties in analysing issues relating to debt forgiveness for state-owned and private enterprises.

8. The Government of Canada believes that transparency provided for through committee notifications is critical to the proper functioning of an open multilateral trade system. As such, can Viet Nam please explain the delay in its subsidy notification and indicate when it plans to submit an up-to-date notification?

ANSWER: Viet Nam affirms its full compliance with notification obligation of the WTO. However, due to capacity constraints, Viet Nam has not notified all the measures affecting trade as required by WTO Agreements. Viet Nam is now drafting a number of notifications on subsidy for the post 2007 period, state trading etc. and shall notify them to the WTO as soon as practicable.

Part III. Trade Policies and Practices by Measure: (4) Measures Affecting Production and Trade; (2.1) Technical barriers to trade: paragraph 3.100, page 70:

It is noted that medical equipment and facilities are listed as being subject to mandatory inspection and quality control (Table 3.11). It is Canada's understanding that Viet Nam requires that an application dossier submitted to obtain a medical device import permit must include a Certificate of Free Sale from the country of manufacture.

9. Could Viet Nam explain what steps it is taking to align its medical device regulatory requirements with those of other leading jurisdictions, and to eliminate the requirement for a Certificate of Free Sale from the country of manufacture in order to obtain an import permit?

ANSWER: Currently, the members of ASEAN are building and finalizing the Draft Agreement on management of medical devices (ASEAN medical device directive) on the basis of harmonizing and streamlining the regulations on management of medical devices in the Asian region and the world with the aim of establishing an integrated management system of medical devices within ASEAN members by 2015.. At the moment, Viet Nam is in the process of drafting a decree on management of medical device to be promulgated by end of 2013).

The certificate of free sale to be issued by the competent authority after assessing, checking and testing the quality of products for ensuring safety of use. Therefore, the Certificate of Free Sale for medical devices is mandatory for ensuring quality and safe use of the medical devices.

Part III. Trade Policies and Practices by Measure: (3.4) Measures Affecting Production and Trade; (3.4.9) Price Controls: paragraph 3.153, page 85:

The Report indicates that the Ministry of Finance may "apply controls when prices increase or decrease 'groundlessly' or 'unreasonably'." This paragraph indicates a very limited number of sectors to which these price controls may apply.

10. Could Viet Nam expand the number of sectors it considers, regarding the subject of "groundless" or "unreasonable" price increases, to include a broader range of manufacturing inputs?

ANSWER: In short, Viet Nam has no plans to expand the number of items on the List of goods and services subjected to the Government's price stabilization. Goods and services subjected to price stabilization are those essential for production and human lives and being listed in the Law on Price. However, if those essential goods and services experience unreasonable fluctuations which affect people's lives, they may be under consideration to be added to the List in accordance with the Law on Price. The disclosure of price stabilization and its measures applied are carried out when the price of goods and services on the List experiences abnormal changes and the price fluctuation level affects of economic – social stability.

Part IV. Trade Policies By Sector: (4.2) Agriculture; (4.2.3) Policies: paragraph 4.21, Page 100:

In the Secretariat Report, it is said that state-owned enterprises play a critical, though declining role in the production, processing and trade of agricultural products.

11. Could Viet Nam provide further information as to the factors leading to the declining role of state-owned in the agriculture sector and if it results from a policy pursued by Viet Nam?

ANSWER: The declining role of the state-owned enterprises in the agricultural sector in particular, and in the national economy in general, has been the outcome of the government's SoEs equitization and restructuring program initiated a decade ago and is still in progress.

Recently the Prime Minister of Viet Nam has issued Decision 899/QD-TTg on the restructuring of the agriculture sector of Viet Nam in the period of 2013 – 2020. In that decision, the private sectors and foreign invested businesses are encouraged to invest in Viet Nam agriculture sectors, creating a fair and level playing field for both domestic and foreign investors in the sector.

Part IV. Trade Policies By Sector: (4.2) Agriculture; (4.2.3.1) Trade Policies: paragraph 4.26, Page 101:

The Secretariat report notes that, in addition to minimum export prices, the government imposed a temporary suspension on new export contracts from July 2007 to the end of that year.

12. Could Viet Nam elaborate on the conditions that led to this temporary suspension?
13. Could Viet Nam say if it intends to impose such a suspension again in the foreseeable future?

ANSWER: In July 2007, due to the food security crisis in the 2007-2008 period and the impact of global economic crisis, and to ensure domestic food security, Viet Nam Food Association temporarily suspended signing new rice contracts, while still implementing previously signed contracts. As such, Viet Nam does not forbid rice export.

Part IV. Trade Policies By Sector: (5) Manufacturing; (2) Automotive: paragraph 4.104, page 124:

It is noted that as part of the "2002 Development strategy until 2010 with orientation until 2020," the Ministry of Industry and Trade suggested, *inter alia*, "a corporate income tax rate of 10% for the entire life of the project, and a 50% reduction of special consumption tax for auto projects that meet criteria on local-content ratios."

14. Can Viet Nam please elaborate on the status of the proposed tax exemption and how the local-content ratio criteria would be consistent with the Agreement on Subsidies and Countervailing Measures?

ANSWER: Viet Nam would like to explain that the Development Strategies are not legal normative documents and thus are not binding in nature. They only provide orientations or recommendations for development policies in certain industries. Based on these orientations and recommendations, the Government will set out concrete policies in the form of legal normative documents to develop the industries without violating the international commitments.

Pursuant to the policy on corporate income tax and special consumption tax, there is no preference on corporate income tax and special consumption tax for auto projects that meet criteria on local-content ratios. Viet Nam do not have any tax preference based on the criteria on local –content ratios.

Part IV. Trade Policies By Sector: (6) Services; (7) Distribution Services: paragraph 4.174 page 150:

The Secretariat report notes that "distribution of alcohol (wines and spirits), cement and concrete, fertilizers, iron and steel, paper, tyres, and audiovisual equipment were opened to foreign investors in 2010."

However, Canada is concerned that Decree 94/2012/ND-CP related to liquor licensing appears to be discriminatory and could be inconsistent with Viet Nam's WTO and GATS obligations. The

licensing measure appears to allow local producers to conduct distribution, wholesale and retailing activities while effectively restricting producers to solely distribution.

Canada is also concerned that Decree 94 requires importers of alcohol to have a letter of attorney from manufacturers or alcohol brand owners, which could unduly disrupt trade.

15. Can Viet Nam please explain how Decree 94 would be consistent with its WTO and GATS obligations?

ANSWER: There is no specific provision in this Decree allowing for discrimination between foreign and domestic enterprises as well as limiting trading rights of enterprises. Thus, this Decree is consistent with the WTO rules.

QUESTIONS FROM CHILE

SECRETARIAT'S REPORT

RESUMEN

Entorno Económico

En el informe la Secretaría afirma que: "Como lagunas notables cabe citar las subvenciones a la agricultura y la industria, sobre las que sigue sin disponerse de datos (desde 2007), y el comercio de Estado, esfera sobre la que Viet Nam no ha proporcionado información a pesar de la importancia del sector público en su economía." (Párrafo 9)

1. **PREGUNTAS:** ¿Podría Viet Nam explicar las dificultades que ha tenido para cumplir con sus obligaciones de notificaciones en los ámbitos de subsidios agrícolas, subsidios y comercio de Estado? ¿Viet Nam podría señalar cuándo estaría en condiciones de presentar sus notificaciones pendientes, en cada una de las áreas en las que presenta retrasos considerables?

ANSWER: Viet Nam affirms its full compliance with notification obligation of the WTO. However, due to capacity constraint, Viet Nam has not notified all the measures affecting trade as required by WTO Agreements. Viet Nam is now drafting a number of notifications on subsidy for the post 2007 period, state trading etc. and shall notify them to the WTO at the soonest time.

Evolución de la política comercial

Se señala que "En 2008, Viet Nam introdujo lo que considera un régimen automático de licencias para una amplia gama de productos de consumo y agropecuarios. En 2010 se amplió la cobertura de productos, en 2011 se redujo algo y el régimen se suspendió temporalmente a partir de septiembre de 2012. Sin embargo, siguen todavía afectados por esta medida determinados productos de acero" (párrafo 14).

2. **PREGUNTAS:** Al hablar de temporalidad, ¿Se espera que esta medida de cuotas de importación se reactive?, Si es así ¿Sería en un futuro próximo? ¿A qué tipo de productos se aplicaría?

ANSWER: On 26 September 2012, the Ministry of Industry and Trade issued the Circular No. 27/2012/TT-BCT providing temporary suspension of the application of regulations on automatic import licensing to a number of goods specified in the Circular No. 24/2010/TT-BCT of 28 May 2010. At this moment, Viet Nam has not planned to re-apply this import licensing procedure.

2 RÉGIMEN DE POLÍTICA COMERCIAL: MARCO Y OBJETIVOS

2.3 Acuerdos y arreglos comerciales

2.3.1 OMC

3. **PREGUNTA:** ¿Podría Viet Nam dar mayores antecedentes sobre los motivos que le llevaron a adherirse al Acuerdo Plurilateral sobre Tecnología de la Información?

ANSWER: Viet Nam is considering to join the Plurilateral Agreement on Information Technology.

3 POLÍTICAS Y PRÁCTICAS COMERCIALES, POR MEDIDAS

3.4.2.1 Obstáculos técnicos al comercio

4. **PREGUNTAS:** ¿Tiene Viet Nam un Portal único que permita acceder a todos los reglamentos técnicos vigentes y a aquellos procesos de consulta pública? ¿Cuáles son los procedimientos para medir el Impacto Regulatorio aplicados por Viet Nam a sus regulaciones? ¿En qué sectores y con qué países Viet Nam ha suscrito Acuerdos de Cooperación Regulatoria? ¿Cuánto es el tiempo usualmente aplicado por Viet Nam en el proceso de implementación de un reglamento técnico y la adecuación de éste por parte de la industria?

ANSWER: For existing regulations in force concerning TBTs, please consult the TBT office website at www.tbtdn.org. This website is up to date as regulations coming in to force.

Furthermore, for drafting regulations concerning TBTs, according to the Law on legal documents promulgation, government agencies responsible of elaborating the regulation must publish the draft of the regulation and all the related documents in their website for comments. For government decrees or a project of Law, the draft will be published in the Government portal (www.chinhphu.vn) or in the National Assembly portal (duthaonline.quochoi.vn/).

Regulatory Impact Analysis has been carried out in accordance with the Law on Promulgation of Legal documents for legal documents promulgated by The prime minister, the Government or National Assembly. Time from the drafting of technical regulation to the entry into effect is normally no less than 6 months for ministries circular, 1-2 years for Government Decrees and much longer for a project of law.

However, this period may be shorter in critical situations like protection of human health and safety and prevention of the spread of disease for human, plants animals and environment...

3.4.2.2 Medidas sanitarias y fitosanitarias

5. **PREGUNTAS:** ¿Qué medidas está tomando Viet Nam para armonizar las normas que aún no han sido armonizadas? ¿Qué medidas está adoptando Viet Nam para garantizar que las nuevas medidas que se adopten, se ajusten al Acuerdo MSF con respecto a transparencia y base científica?

ANSWER: Harmonization of regulations require time for scientific researching activities in adapting to

Viet Nam social, economic and technical development state of Vietnam. Viet Nam will actively in cooperating with trading partners to further harmonize TBT and SPS regulations.

Concerning the scientific basis of state management, Vietnam's law on Standards and Technical regulations stated clearly in Article 6 (3.a) and (3.b) on Principle in elaborating Standards and Technical regulations:

"The elaboration of Standards and Technical regulations must:

- a. Base on the progress of science and technology, factual experiences, present needs and the tendency of socio – economic development;
- b. Use international, regional and foreign standards as basis to elaborate standards and technical regulation except those incompatible with geographic, climatic, technical and technological characteristic of Viet Nam or affect negatively to national interests;"

Viet Nam government is determined to improve further the transparency of drafting, elaborating state management regulations especially those relating to TBT and SPS by continuing to explore various possibilities to amend the Law on legal documents promulgation.

3.4.7 Comercio de Estado, empresas públicas y privatización/conversión de empresas públicas en sociedades por acciones

"Sin embargo, por el momento Viet Nam no ha notificado a la OMC si mantiene alguna empresa comercial del Estado, en el sentido del artículo XVII del GATT de 1994 o de la definición operativa recogida en el Entendimiento relativo a ese artículo, que comercie con esos o cualesquiera otros productos. Además, Viet Nam no ha presentado a la OMC los informes periódicos sobre la situación de su programa de privatizaciones y de reforma de las empresas privatizadas previstos en los documentos de adhesión por motivos de transparencia" (Párrafo 3.143).

6. **PREGUNTAS:** ¿Podría Viet Nam explicar las dificultades que ha tenido para cumplir con la entrega de informes referidos la situación de su programa de privatizaciones y de reforma de las empresas privatizadas, según lo previsto en los documentos de adhesión?

ANSWER: Viet Nam had commitments on state trading enterprises, which is set out in Table 5, Working Party's Report on Viet Nam's Accession to the WTO. Since the WTO accession, Viet Nam hasn't maintained state-trading enterprises for any products beyond those listed in this Table

3.4.8 Política de competencia

"Hasta la fecha, la Autoridad de Defensa de la Competencia no ha llevado a cabo un gran número de investigaciones de medidas comerciales correctivas en Viet Nam . Sin embargo, ha dedicado un volumen significativo de recursos a prestar asistencia a los exportadores vietnamitas sometidos a investigación en mercados extranjeros" (Párrafo 3.149). Además la nota al pie 129 señala: "Por ejemplo, ha establecido un sistema de alerta temprana basado en los asuntos antidumping iniciados contra exportadores vietnamitas en los principales mercados".

7. **PREGUNTAS:** ¿Cómo funciona este mecanismo de alerta temprana? ¿Qué otras medidas de asistencia a los exportadores ha aplicado la Autoridad de Defensa de la Competencia?

ANSWER: The Early Warning System on Antidumping Investigation ("System") was funded by GCF Project – Kingdom of Denmark and it was launched since 2010. The System is designed to help to lessen the damages caused by antidumping investigations on Viet Nam 's exports as well as help enterprises have more time to prepare and actively avoid the possibility of being investigated. The System operates by combining the results of analysis of quantitative and qualitative inputs information and then come out with a mark for each product. Each mark will indicate the warning level for that product. For example, if a product exported to Country A gets mark 9, it's equal to red light and it suggests that this product is highly possible to be subject to an antidumping investigation from Country A in the near future.

In addition, as a state management agency on trade remedies issues in Viet Nam , VCA also helps enterprises in some aspects: advising on general procedures related to trade remedies proceedings; focus point in drafting the government responses in CVD cases; providing technical supports to business communities on trade remedies issues...

3.4.10 Régimen de la propiedad intelectual relacionada con el comercio

3.4.10.1.3 Organismos competentes en materia de propiedad intelectual

8. Chile agradecería aclaración y mayor información sobre las "opiniones periciales para contribuir a velar por la observancia" emitidas por la Oficina Nacional de Propiedad Industrial.

ANSWER: In Viet Nam legal enforcement system, the National Office of IP could provide expert opinions for a fee (if businesses use its pay service- through the service of Assistance and Consultancy Center - NOIP) or for free if businesses send specific inquiries to the NOIP for guidance in order to comply with the regulations. In this case, expert opinions could be understood as guidance to regulations compliance.

3.4.10.2 Propiedad intelectual

3.4.10.2.2 Propiedad industrial

3.4.10.2.2.1 Marcas de fábrica o de comercio

9. Chile agradecería mayor información acerca de las Marcas de fábrica o comercio. En específico, se agradece información respecto a si, en Viet Nam , se exige el uso real y efectivo de las marcas, y los medios para demostrarlo.

ANSWER: Business names are regulated strictly by Government decree no 43/2010/ND-CP on Business registration.

Trade marks and other relating issues are regulated by Law on Intellectual Property under Part 5 and 6 Chapter 7.

4 POLÍTICAS COMERCIALES, POR SECTORES

4.3 Pesca

4.3.3 Políticas

En el número 4.61 se señala: "En virtud de la Decisión N°2322/QD-BNN-TCTS, de 26 de septiembre de 2012, se estableció un comité encargado de este programa", este comité

10. **PREGUNTAS:** ¿Es a qué nivel, regional? ¿A quién le responde?

ANSWER: Ministry of Agriculture and Rural Development issued the Decision No. 2322/QD-BNN-TCTS to establish Council acceptance of the project master plan to develop Vietnam's fisheries sector in 2020, vision 2030. Council have accepted the task of evaluating the project planning design according to the current regulations. This Council is under the *Ministry of Agriculture and Rural Development*.

11. De acuerdo al número 4.64, primer punto, se señala que en marzo de 2008, "se previó ayudas temporales para varios sectores" **PREGUNTAS:** ¿Cuál es la duración de esta ayuda temporal? Esta ayuda ¿Se otorga al sector pesquero independiente de la nacionalidad del capital dueño o mayoritario de las embarcaciones pesqueras? o ¿Es una medida sólo para pesca artesanal?

ANSWER: The increase of oil price in the years 2007 and 2008 directly affected the lives of poor coastal fishermen. The Prime Minister has issued Decision No. 289/QD-TTg promulgating policies in order to help them overcome difficulties. Among these policies, fuel subsidies are considered as necessary short-term measures to ensure the livelihood of the poor coastal fishermen.

4.5 Manufacturas

12. **PREGUNTA:** ¿Podría Viet Nam dar mayor información sobre el modo de aplicación de la Decisión N° 604/QD-TTg de mayo de 2012 referida incremento del valor añadido en el sector manufacturero?

ANSWER: According to the Decision No. 604/QD-TTg dated May 25, 2012 of the Prime Minister approving the project on raising of productivity and quality of industrial products and goods under the national program to raise productivity and quality of products and goods of Vietnamese enterprises through 2020, general objectives are:

- To raise productivity and quality of core industrial products and goods on the basis of application of management solutions, scientific advances, technological innovations, and investments;
- To elaborate and improve the system of standards and technical regulations; to apply management systems, productivity and quality improvement tools, and advanced models and production processes in order to raise productivity and quality of industrial products and goods.

4.6 Servicios

4.6.6 Transporte

4.6.6.1 Transporte marítimo

13. En cuanto al número 4.160 **PREGUNTAS:** ¿Quién es la autoridad competente, para las "decisiones fundamentales"? ¿Esta autoridad es de nivel regional?, si no lo es ¿A qué nivel se ha definido?

ANSWER: The Ministry of Transportation is the main responsible agency and the Viet Nam Maritime Administration is the advisory agency for the Ministry of Transportation when making decisions.

4.6.6.2 Transporte aéreo

14. En relación al número 4.164 **PREGUNTAS**: ¿Cuáles son las razones por las cuales no se han otorgado autorizaciones de cabotaje? ¿Será porque no ha habido requerimientos, o los solicitantes no han cumplido con las condiciones necesarias? Si la razón es por no cumplir con las condiciones necesarias **PREGUNTA**: ¿Podría Viet Nam señalar los requisitos exigidos en este contexto?

ANSWER: We only grant licenses to foreign vessels when their mother-vessels stop over at the international transit ports of Cai Mep-Thi Vai for intermediate transfer of the Vietnamese exports and imports to Europe and the Western and Eastern banks of the US.

INFORME DEL GOBIERNO

2.2.3 Trade Policy Developments since WTO Accession

2.2.3.3 Recent Trade and Trade Related Policy Developments

2.2.3.3.4 Telecommunications

15. Con respecto al "Viet Nam Telecommunications Authority" (VNNTA), **PREGUNTAS**: ¿Es un organismo supervisor, regulatorio y sancionatorio? Si no fuese así, ¿Quiénes ejercen estas funciones?, ¿Es un organismo independiente o dependiente?, si fuese esta última la opción **PREGUNTA**: ¿De quién depende?

ANSWER: The Viet Nam Telecommunications Authority (VNNTA) is an agency under the Ministry of Information and Communications, performing the consultative functions to the Minister of Information and Communications on the state management and implementation of such functions in the field of telecommunications nationwide. VNNTA is the management agency specialized in telecommunications, which was established under the Decision No. 35/2011/QĐ-TTg dated 27 June, 2011.

Together with VNNTA, the other management agencies such as The Authority of Radio Frequency Management, Viet Nam Internet Network Information Center (VNNIC) and the Inspectorate of the Ministry of Information and Communications are all state management bodies which enforce telecommunications management functions and operate under the provisions of the Law on Telecommunications and other relevant laws and regulations of Viet Nam .

QUESTIONS FROM CHINA**SECRETARIAT'S REPORT****1. Economic Environment****Page 8 (Para 7)**

Viet Nam went a long way in equalizing the treatment accorded to Vietnamese and foreign investors with the promulgation of its enterprise and investment laws in 2005. However, some differences remain and may lead to differing interpretations, particularly when a foreign investor acquires a locally owned business. The establishment of a one stop shop system for business registration and investment licensing is a long-standing issue, and could help to address occasional allegations of inconsistent and uncoordinated implementation of laws and regulations by the responsible government agencies.

Questions:

1. Currently, in which fields does Viet Nam treat Vietnamese and foreign investors in different way? What are the main laws and regulations involved?

ANSWER: Viet Nam has been fully complying with commitments on treatment granted to foreign investors, which are consistent with its WTO commitments.

2. Please illustrate the current establishment status of the one-stop shop system for business registration and investment licensing and the main results that have been achieved.

ANSWER: Under the one-stop shop system, foreign investors need only apply investment dossiers to authorised licensing agency and receive investment certificates from that agency.

Page 11 (Para 23)

The enforcement system in Viet Nam is highly complex. Regulation is provided through various legal and administrative texts, and the responsibilities for IPR enforcement are shared among a considerable number of central and local authorities. Issues such as counterfeited and pirated goods, and cable and satellite signal theft, remain matters of concern.

Questions:

3. What measures will Viet Nam take to protect the IPR of foreign investors?

ANSWER: Apart from civil and criminal measures, Vietnam applies administrative measures for IPR infringement acts. Responsibilities of IPR administrative enforcement agencies are regulated clearly in the IP law and sub-laws.

Vietnam will, step by step, replace the local administrative enforcement regime with judiciary enforcement once the Courts' competence and capacity are enhanced to the appropriate level as required.

Administrative, civil and criminal measures will be applied to protect domestic and foreign IPR holders.

Page 13 (Para 1.2)

In recent years Viet Nam's competitiveness seems to have been under threat, with power generation not keeping pace with demand, rising logistical costs and real estate prices, and skill shortages becoming more widespread. Despite rising labour productivity (sections 4.4, 4.5, and 4.6), the contribution of total factor productivity (TFP) to the growth of Viet Nam's

factor-driven economy has been declining; indeed, TFP growth collapsed during 2005-10 and the entire growth came from factor accumulation.

Page 16 Table 1.1 Selected macroeconomic indicators, 2007-12

In January 2009, the Government announced a đ17 trillion (US\$1 billion) stimulus, involving a 4% interest rate subsidy for businesses and individuals. In May 2009, the Government officially announced a comprehensive đ145.6 trillion (US\$8 billion or 8.3% GDP) stimulus package, including the January 2009 measure, in order to enhance growth in the scenario of deeper global economic recession.

According to the IMF, these policies had the desired effect, but with the sharper-than-expected slowdown of the economy and the rapid fall in inflation in early 2012, the SBV reduced policy interest rates and the government began to encourage more bank credit to strategic sectors.

Page 27 (Para 1.26)

However, the risk of macroeconomic instability may curtail economic growth and adversely affect the confidence of foreign investors.

Questions

4. The Viet Nam government has taken a series of measures to improve the environment for the development of macroeconomy since the financial crisis in 2008, such as reducing tax and encouraging bank credit. Have these measures achieved expected results? What positive influences have these measures brought to the industries suffered from the crisis? When will the relevant preferential policies expire? After expiration, will the Viet Nam government plan to take other measures to improve the environment for the development of macroeconomy? Please illustrate the detailed information if there is any.

ANSWER: Most of adopted measures to encounter the financial crisis in 2008 have produced desired outcomes, helping to maintain the goals of macro-economic sustainable growth and provide favourable conditions for enterprises to maintain their operations.

5. Are there plans of the Viet Nam government to boost the confidence of foreign investors? What specific measures will the Viet Nam government take? Will the Viet Nam government provide preferential policies to foreign investors?

ANSWER: To improve investment environment and attract FDI, the Government has promulgated Resolution No. 103/NQ-CP dated 29th August, 2013 on the direction of enhancing efficiency in FDI attraction, use and management in the coming time.

Resolution No. 103/NQ-CP has identified the key viewpoints as follows:

- Foreign-invested economy is part of Viet Nam's economy, which is encouraged for sustainable development, guaranteed of legitimate rights and interests and fair treatment on the basis of mutual beneficial cooperation and compliance with international commitments that Viet Nam is a party.
- FDI plays as a key source of economic power, which is combined with domestic resources to create consolidated strength to realise the target of industrialisation and modernisation and economic restructuring.
- Amendment of foreign investment regulations must gradually improve competitiveness in the way of being more favourable and preferential.
- Basing on the above-mentioned viewpoints, Resolution No. 103/NQ-CP has indicated the following solutions:

- Perfecting the investment-related legal system in the consistent, public, transparent and predictable manner to be more investor-favourable and regionally competitive.

Page 24 (Para 1.18)

Nevertheless, in some industries (i.e. electricity, aviation, and telecommunications), SOEs have a *de facto* monopoly, with a market share of at least 80% (sections 4.4.2.1, 4.6.5.1, and 4.6.6.2). Other heavily regulated industries tend to have some foreign and private-sector participation, but are dominated by state-owned oligopolies, e.g. several large enterprises with a market share of 10% to 40% each.

Questions:

6. Does the Viet Nam government have any plan to open up the industries in which SOEs currently have a *de facto* monopoly to foreign and private-sectors? On what level?

ANSWER: According to Prime Minister's Decision No.929/QD-TTg dated 17 July 2012 on Plan to restructure SOEs during 2011-15, 100% state ownership is maintained only in enterprises in areas of state monopoly, national defense and security; publication; agricultural irrigation; transport safety; lottery; electricity production and distribution at massive scale and multi purposes and having significant socio-economic impact attached with national defense and security; management and operation of national and urban railway infrastructure; airport and seaport Class I; money printing and moulding. Enterprises in other areas shall not have 100% state ownership, therefore, private and foreign investment are welcomed.

Page 24 (Para 120)

Lack of transparency, and thus lack of public accountability, creates scope for administrative discretion and therefore corruption..... Nevertheless, weak implementation and the lack of independent anti-corruption agencies still present hurdles to the fight against corruption, which seemingly remains rampant and systemic; as a result, Viet Nam ranks relatively low in international comparisons.

Questions:

7. Regarding the fight against corruption, what measures has the Viet Nam government taken or will take to improve the current economic environment?

ANSWER: Regarding the fight against corruption, Viet Nam is member of the United Nations Convention Against Corruption. Viet Nam has been actively implement commitments of this convention.

For domestic regulations, Viet Nam has promulgated legal documents relating to anti-corruption such as: law 55/2005/ql dated 29/11/2005 on anti-corruption (amended 2012); decree 59/2013/nd-cp dated 17/6/2013 detailing and guiding a number of articles of the law on anti-corruption; decrees 78/2013/nd-cp dated 17/7/2013 detailing and guiding a number of provisions on transparency of property and income and many other legal documents. These documents are effective legal tools in anti-corruption and improvement the economic environment.

In addition, with respect to anti-corruption agencies, Viet Nam has established central steering committee for anti-corruption that is directly administered by the politburo and chaired by party general secretary.

The central steering committee on anti-corruption is in charge of nine obligations, including proposing the politburo and the secretariat for considering and deciding mechanisms, policies, laws and solutions on anti-corruption; discussing and deciding annual key working programs and plans on anti-corruption.

The committee can direct and work with relevant agencies in dealing with serious corruption cases.

Besides, the central committee for internal affairs is the standing agency of the steering committee and the internal affairs. Committee for internal affairs are also established at provincial level.

2. Trade Policy Regime: Framework and Objectives

Page 39 (Para 2.33)

Viet Nam's investment regime is based on the Enterprise Law (No. 60/2005/QH-11) and the Investment Law (No. 59/2005/QH-11), both adopted in November 2005 and in force since 1 July 2006.

Questions:

8. Please illustrate what role does the Foreign Investment Law promulgated in 1987 play in Viet Nam 's investment regime, as well as its relationship with the Investment Law adopted in 2005.
9. Does the Viet Nam government have any plan to amend the Foreign Investment Law in the near future? If any, please introduce the reasons and principles of amendment as well as the timetable.

ANSWER: Viet Nam has adopted the Law on Investment 2005, which is uniformly applied to enterprises of all economic sectors. The Law on Investment 2005 superseded the Law on Foreign Investment 1987.

3. TRADE POLICIES AND PRACTICES BY MEASURE

Page 39 (Para 2.35)

Vietnamese investors may obtain a business registration certificate under the Enterprise Law... Foreign investors may apply for an investment certificate, which will also serve as a business registration certificate.

Questions:

Besides serving as a business registration certificate, does an investment certificate have other effects? Is it feasible if a foreign investor just apply for an investment certificate without obtaining a business registration certificate?

ANSWER: Investment certificate provides for investment objective, scale, location, total value of capital, operation duration of the project...

In the case that a foreign-invested enterprise established under the investment certificate (which also serves as certificate of business registration), such enterprise may only apply for investment certificate for implementing new projects without obtaining a business registration certificate.

Page 39 (Para 2.35)

All investment projects (domestic and foreign) worth more than đ300 billion as well as all projects in the conditional sectors are subject to an "investment evaluation", focusing on compliance with master plans for technical infrastructure, land use, construction, and the use of natural resources and minerals.....

Questions:

10. Please illustrate the specific evaluation methods as to an "investment evaluation."

ANSWER: Please refer to the answer for question 16 and 17.

Page 40 (Para 2.37)

The foreign business community appears to view the approval process for investment and establishment of businesses as difficult and time-consuming, involving complex administrative procedures, and at times inconsistent and un-coordinated implementation of laws and regulations by the responsible government agencies.....The establishment of a one-stop shop system for business registration and investment licensing, e.g. leaving the local authority fully in charge of all necessary approvals, has been suggested as a way to simplify the present system.

Questions:

11. Does the Viet Nam government have any plan to simplify the current approval process for foreign investment? Will a one-stop shop system for business registration and investment licensing be established? Does the Viet Nam government have other specific plans to simplify the approval process for foreign investment?

ANSWER: Investment procedure reform is one of the key solutions that the Government of Viet Nam is focusing on. At present, investment licensing authority is fully decentralised to provincial People's committees and Management Boards of industrial and export processing zones. A one-stop shop system has already been established in these above-mentioned government authorities to facilitate the process of implementing foreign investment procedures.

Moreover, the Government has instructed relevant ministries and line ministries to take overall review of the legal system, especially regulations on business and investment procedures so as to ensure and improve the consolidation and feasibility of legal framework, and facilitate the consistent application among ministries, line ministries and local authorities.

Page 40 (Para 2.39)

"In order to stimulate private investment in infrastructure, Decision No. 71/2010/QD-TTg, effective since January 2011, permits public private partnerships (PPPs) on a pilot basis, notably for road transport infrastructure, rail and urban transport, airports, seaports and river ports, fresh water supply and waste treatment, power plants, and hospitals."

Questions:

12. Regarding the PPPs mode in infrastructure, is there any requirement for private investment proportion?
13. Under the PPPs mode, will the Viet Nam government offer sovereign guarantee or other guarantee measures?

ANSWER: Subject to Decision No. 71/2010/QD-TTg dated 9th November, 2010 promulgating the regulation on pilot investment in the form of public-private partnership, the maximum value of State ownership does not exceed 30% of investment in the PPP project, except for cases otherwise approved by the Prime Minister.

Government guarantee may be considered on a case-by-case basis subject to negotiations between government authorities and investors.

Page 42 (Para 3.5)

Nationwide, e-customs procedures were launched in early January 2013. The system covers electronic submission of customs declarations, as well as the processing by Customs, including automatic processing of declared tests and analyses.

Questions:

14. Please explain the meaning of the "declared tests and analyses".

ANSWER: This is a step to test and analyse the custom declaration made by applicants. The declared test and analyses can be processed automatically by the e-custom procedures.

Page 43 (Para 3.9)

Domestic investors must hold a valid Business Registration Certificate, whereas foreign investors require an investment certificate, which serves as a licence for their investment projects and a "business registration certificate"

Questions:

15. What are the specific requirements for a foreign investor to apply for a business registration certificate? To which authority does a foreign investor apply for such a certificate? How long will the certificate be issued?
16. Please illustrate the differences in terms of the application requirements, the corresponding authorities as well as the approval time between a foreign investor's application for an investment certificate and a domestic investor's application for a business registration certificate.

ANSWER:

Licensing authorities

The authorities who are authorized to issue investment certificate to Vietnamese and foreign-owned companies include (i) provincial People's Committees and Management Boards of industrial and export processing zones.

Licensing procedure

Depending on the size and the sector of investment, different licensing and registration procedures will be applied:

- i) Investment registration; or
- ii) Investment evaluation

Foreign investors investing in Viet Nam for the first time must have an investment project and carry out either registration or evaluation procedures, in order for an investment certificate to be issued.

Investment registration

Foreign investment projects with a total invested capital of less than VND300 billion (approximately USD15 million) not falling in a conditional sector are subject to "investment registration" and foreign investors of such projects must carry out the procedures for investment registration in order to be granted an investment certificate. The investment certificate also serves as the business registration of the corporate entity.

Domestic investment projects with a total invested capital from VND15 billion to less than VND300 billion are also subject to "investment registration". Subject to a request of the local investor, the Licensing Authority will issue an investment certificate to such investor.

Enterprises can subsequently register additional investment projects without the need to create a separate entity.

The procedure for "investment registration" is set out in Decree 108/2006/ND-CP. Accordingly, the investor must submit application documents for investment registration to the Licensing Authority. The Licensing Authority shall check the documents and issue the investment certificate to the investors within 15 working days of receiving the valid application.

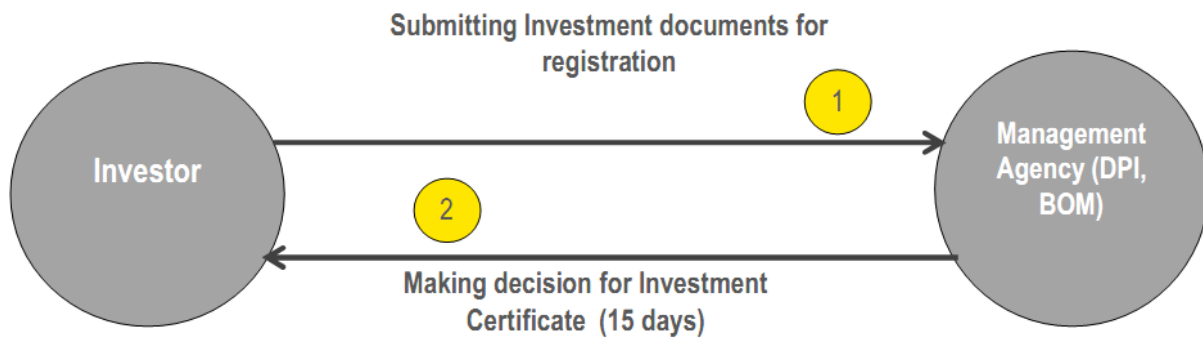


Chart 1: Investment Registration Procedures

Evaluation procedures

Any investment project with a total invested capital of VND300 billion (approximately USD15 million) or more or investment projects falling in conditional sectors must undergo "an investment evaluation" by the Licensing Authority and other relevant authorities. There are two different types of evaluation:

- i) Evaluation for investment projects regardless of total invested capital falling into conditional sectors; and
- ii) Evaluation for investment projects with total invested capital of VND300 billion or more that do not fall into conditional sectors.

1.1. For the evaluation of investment projects with total invested capital of VND 300 billion or more, along with the application documents, the applicant must also submit an "economic-technical explanation" of the investment project to the Licensing Authority. This covers the economic-technical explanatory statement, objectives, scale, location, investment capital, implementation schedule, land use needs, and technological and environmental solutions of the investment project.

1.2. For the evaluation of investment projects falling in conditional sectors, in addition to the application documents, the investor must also demonstrate compliance with requirements specific to that conditional sector.

When assessing the application documents, the Licensing Authority may liaise with other relevant Ministries and authorities in evaluating the proposed investment project. Items to be evaluated shall comprise:

- i) Compliance with master planning/zoning for technical infrastructure, master planning/zoning for land use, master planning for construction, master planning for utilization of minerals and other natural resources;
- ii) Land use requirements;
- iii) Project implementation schedule;
- iv) Environmental solutions.

The Law on Investment stipulates that the time-limit for evaluation of investment shall not exceed thirty (30) days from the date of receipt of a complete and valid file. In necessary cases, the above time-limit may be extended, but not beyond forty five (45) days.

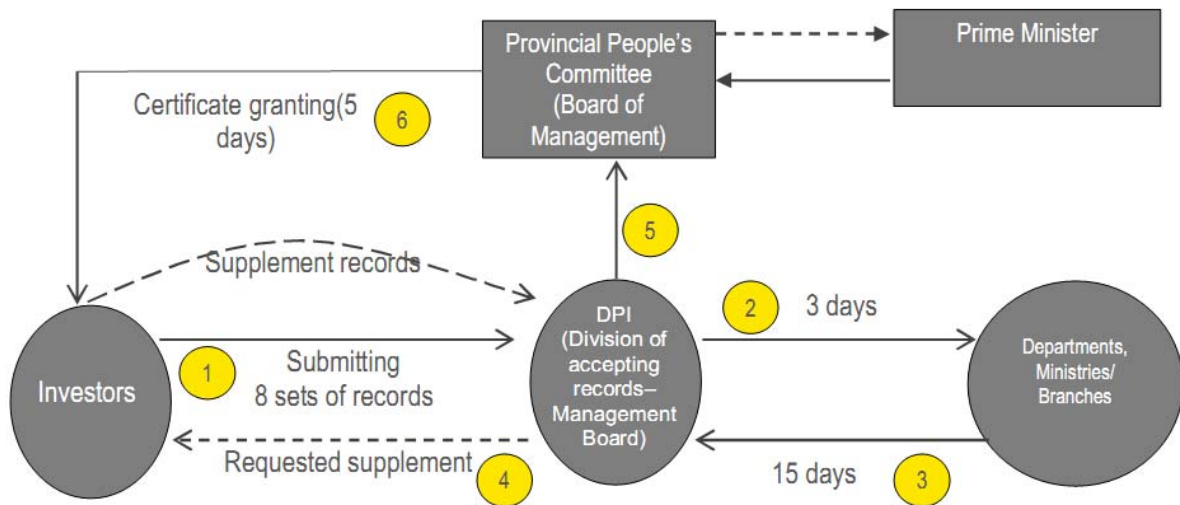


Chart 2: Investment Evaluation Procedures

Application dossier

In general, the following documents are required for the establishment of a 100% foreign-invested enterprises³:

- i) Request for the issuance of an investment certificate in the prescribed form
- ii) A draft charter of the company to be established
- iii) A list of investors in the prescribed format
- iv) A report of the financial capability of the investors
- v) An economic and technical explanation of the project "Feasibility Study"
- vi) An explanation of how the conditions will be satisfied
- vii) The investor's Certificate of Incorporation.

Page 43 (Para 3.11)

Some restrictions remain; goods identified as subject to "state trading" may only be imported by designated enterprises.

Questions:

17. Does the Viet Nam government have any plan to gradually abolish the restrictions to the importation of the goods identified as subject to "state trading"?

ANSWER: Viet Nam reserved the importing right for some state trading enterprises in the certain time which is set out in Table 5, Working Party's Report on Viet Nam's Accession to the WTO. The removal of import restrictions in state trading will be done as committed.

³ Detailed guidance on application dossier is available in Decree 108/2006/ND-CP dated 22/9/2006.

Page 44 (Para 3.13)

For a foreign investor physically present in Viet Nam, the right to import goods does not extend to the distribution of these goods, unless it is stipulated in the investment licence of the enterprise.

Questions:

18. Are there any special additional requirements for the application for an investment certificate if a foreign investor intends to extend the right to import goods and distribute these goods? When does Viet Nam intend to ease restrictions on foreign investors by extending the right to import goods and distribute these goods?

ANSWER: In the Vietnam's WTO commitment and Legislation there is a distinction between the import right and distribution right. Accordingly, if an enterprise does have the right to import (but does not have the distribution right), it will not be allowed to distribute the goods it imports, and has to sell the product it imports to the (according to Circular 08/2008/TT-BCT dated 22 April 2013 of the Ministry of Industry and Trade).

The licensing in the distribution sector must ensure the compliance with the schedule for implementing WTO commitments. So far there are 9 products such as rice, sugar, tobacco, crude oil and petroleum products, pharmaceuticals, explosives, magazines, precious metals and gemstones are excluded from the WTO commitments of Viet Nam in the distribution service. In addition, other products such as wine, cement, fertilizer etc. have been opened up as of 01 January 2010. However, it is to emphasize that the distribution service is an investment sector subject to conditions. In addition to the WTO commitments, foreign investors need to meet the requirements by the examination and issuance of the investment certificates in accordance with the Vietnam's investment law, the requirements of specific administration for certain products such as the licensing of alcohol trading ... (this applies to both for FDI enterprises and Vietnamese enterprises) as well as other related regulations for each specific case.

Page 45 Table 3.1 Viet Nam's tariff structure, 2007 and 2013**Page 46 (Para 3.21)**

However, a number of tariff increases since 2008 seem primarily motivated by a willingness to afford higher protection to certain domestic sectors, e.g. to manufacturers of motor vehicles, meat producers, and the local steel industry. Although all tariff increases appear to have been within the limits set by Viet Nam's tariff commitments in the WTO, frequent changes in the applied tariff introduce uncertainty and may undermine the predictability of WTO Members' access to the Vietnamese market.

Questions:

19. The proportion of Viet Nam's domestic tariff peak items to all tax items was 3.1% in 2007. Yet it increases to 4.1% in 2013. Please explain why the Viet Nam government increases the tariff peaks.
20. What measures will the Viet Nam government take to gradually reduce the proportion of tariff peaks as well as the frequency of tariff adjustments to gradually open up the Viet Nam market?

ANSWER: In 2007-2008, global commodities price increased dramatically, which required Viet Nam to adopt counter measures, including tariff adjustment, to smooth out "imported inflation". Viet Nam reserves the adjustments in full compliance with its commitment in WTO.

Tariff peaks and other tariff lines have been subject to the binding and reduction schedule that Viet Nam committed in its accession to WTO

Page 45 (Para 3.19)

However, Viet Nam reserved the right to apply specific or compound import duties on certain "sensitive" goods to address customs fraud. So far, this has not proven necessary, and only second-hand motor vehicles are subject to (applied) non-*ad valorem* rates at present.

Questions:

21. How can the Viet Nam government prove that reservation of the right to apply specific or compound import duties on certain "sensitive" goods can effectively address customs fraud? Does the Viet Nam government have any plan to abolish such right to promote trade liberalization?

ANSWER: Currently, Viet Nam adopts combined tariffs (*ad valorem* + specific duty) for used motor vehicle and this measure proves to be effective in limiting exposure to fraudulent customs valuation. Accordingly, Viet Nam reserves the right to adopt specific duty or combined tariff as long as it is compatible with Vietnam's tariff commitments.

Page 49 (Para 3.29)

Circular No. 172/2010/TT-BTC of 2 November 2010, establishes a single fee for customs clearance of $\leq 20,000$ per declaration form.

Page 78 (Para 3.126)

Transit goods are subject to customs clearance at the ports of entry and exit. The goods (or means of transport) are subject to a customs processing fee of $\leq 200,000$ per declaration form.

Questions:

22. Please explain the reason for the difference between the two above-mentioned fees, and explain how such difference complies with Article 5 and Article 8 of GATT.

ANSWER: The fees of 20,000 VND (less than 1 USD) per a declaration form is for clearing customs procedures, which applies to exportation and importation, irrespective of type or quantity of goods in a single declaration form. Whilst the fee valued at 200,000 VND per a declaration form is applicable to goods and transportation vehicles in transit, which differs from normal importation or exportation, as it involves the transfer of goods and transportation vehicle from a country, through border gate (port of entry), into the territory of Viet Nam then into territory of a third party country or return to the first country, which necessitate not only customs procedures clearance, but also customs supervision and inspection, strict adherence to the shipping route, through the port of entry as required by relevant regulation; as such, this fee level must ensure cost recovery to compensate for the services rendered. Regulation on customs fees outlined in Circular 172 to ensure compliance with Vietnam's commitments.

Page 56 (Para 3.43)

The licence must be presented prior to unloading in Viet Nam, and requires, along with the application form, copies of (i) the business registration certificate, (ii) the import contract or equivalent documents, (iii) the commercial invoice; (iv) the letter of credit or payment documents; and (v) the bill of lading. Provided all documentation is in order, the licence should be issued automatically within 7 working days, free of any administrative fee or charge

Questions:

23. In terms of the issuance system of the licence for import and export goods, the Ministry of Science and Technology of Viet Nam has once published a catalog of import and export goods that have to go through mandatory quality inspection. For these goods, before they go through customs clearance, they should firstly get approval of quality inspection from relevant administrative authorities (including the Ministry of Public Health, the Ministry of Agriculture and Rural Development, the Ministry of Industry, the Ministry of Fisheries and

the Ministry of Science and Technology). Some goods are inspected in accordance with national standards, some are inspected in accordance with internal criteria established by competent authorities, while others must comply with both. China is concerned with the transparency of such inspection system. What is the relationship between the catalog published by the Ministry of Science and Technology and the catalog of goods required to obtain licences for import and export? Does the Viet Nam government regularly publish the catalogue of goods required to obtain licence for import and export with specific requirements to be met for each type of goods to to get the licence?

ANSWER: The Ministry of Science has never published "a catalog of import and export goods that have to go through mandatory quality inspection" and the statement " some goods are inspected in accordance with national standards, some are inspected in accordance with internal criteria established by competent authorities, while others must comply with both".does not seem to be correct.

The law on products and goods quality provides that the relevant ministries are responsible for supervising and control products and goods as assigned in the law and Decree No. 132. Currently, the Ministry of Science and Technology only issues technical regulations adjusting the regulation on quality and control measure for products and goods that are covered by these technical regulations.

Page 57 (Para 3.44)

Prior to accession, Viet Nam had eliminated foreign exchange restrictions on-essential" import items and consumer goods, and "payment method" restrictions. However, in April 2010 the Ministry of Industry and Trade promulgated a long list of "non-essential" imported commodities and consumer goods not encouraged for import. The State Bank of Viet Nam subsequently instructed credit institutions to consider carefully or restrict the provision of foreign currency loans to finance imports of the listed items. The list was expanded in 2011, as Decision 1899 was replaced by Decision No. 1380/QD-BCT of 25 March 2011. Among the discouraged items are live animals, dairy products, sugar confectionary, fish and crustaceans, and table salt.

Questions:

24. In 2010, the Ministry of Industry and Trade promulgated a list of goods not encouraged for import, and further expanded the list in 2011. Please explain the reason thereof.
25. Please explain how such measures to restrict import keep consistent with the Viet Nam government's obligation under WTO.
26. In 2010, Viet Nam promulgated a long list of "non-essential" imported commodities and consumer goods not encouraged for import, and further expanded such list in 2011, which brings more difficulties for the goods on the list to obtain import credit and increases Viet Nam's import barriers. What is the purpose for promulgating such a list? When will such restriction be abolished?

ANSWER: List of "non-essential" imported commodities and consumer goods not encouraged for import issued by the Ministry of Industry and Trade of Viet Nam is a reference document for relevant ministries and agencies to develop policies consistent with WTO, such as increase or decrease in MFN tax in line with the international commitments of Vietnam; application of technical measures to trade in line with TBT Agreement in WTO.... This Decision of the Ministry of Industry and Trade of Viet Nam is not a legal and mandatory document.

The issuance of this Decision is completely not intended to restrict the provision of foreign currency loans to finance imports of the listed items. Current regulations do not allow the Government or the State Bank of Viet Nam to get involved in business activities of commercial banks and credit institutions. Commercial banks and credit institutions in Viet Nam have the right to decide, in accordance with current legislation, which enterprises to provide foreign currency loans to import goods (without any discrimination between essential and non-essential goods). Therefore, this decision does not restrict imports and does not breach WTO rules.

Page 57 (Para 3.47)

In January 2011, the General Department of Customs issued an official letter identifying reference prices for selected imported goods by trading partner.

Questions:

27. What goods are the "reference prices" applied to? How does the Viet Nam customs deal with the goods whose declaration prices are lower than the "reference prices"?

ANSWER: Criteria for selection of products in the database includes: goods with high tax rates, large turnover, and high fraud in price. The database is updated, adjusted regularly in line with the fluctuations of the market price. The database is not used for price determination or imposing on custom value of goods and it's not the minimum price. Determining the Customs Valuation must.

If an importer want to challenge a valuation, they should enter into a consultation with the customs authorities. This consultation could help to determine the transaction value for custom duty calculation which must be in accordance with the principles and procedures of 6 methods of value determination of Agreement on Customs Valuation WTO.

Page 58 (Para 3.49)

According to Vietnamese businesses, the application of HS Codes is not always uniform across customs offices, which means that the same good could be subject to different duty depending on classification matters. According to the customs authorities, some of these issues may be due to differences in the technical documentation and product descriptions provided by the importers themselves, or to new high-tech, multi-functional, and complex goods giving rise to different opinions among customs officials regarding correct classification. Viet Nam Customs is currently constructing a database for unified inspection and classification of certain types of goods.

Questions:

28. When will Viet Nam establish a database for unified inspection and classification of certain types of goods?

ANSWER: In order to manage and control the classification of goods, applied uniformly tariffs whole over the country, on 06/22/2012 Director General of General Department of Viet Nam Customs signed, issued Decision No. 1266/QD-TCHQ approved "Project establish information system manage database nomenclature, tariff and classification, tariff rate (MHS)". Based on this, adherence by the schedule, information system manage database nomenclature, tariff and classification, tariff rate (MHSv1.1) was officially established and the customs department used from September 9/2013.

Page 58 (Para 3.50)

Importers wishing to obtain prior assessments of origin may submit relevant documents and materials to the customs office. According to Article 8 of Circular No. 194/2010/TT-BTC of 6 December 2010, prior certification of origin is valid for one year from the date of issue, and may also apply to goods of the same category coming from the same producer or exporter the importer is trading with.

Questions:

29. In which areas can the customs' prior assessments of origin be applied?

ANSWER: Viet Nam applies advance rulings on origin at all customs offices and for all types of goods if the importer submits the legal documents in full to request for advance rulings.

Page 65 (Para 3.77)

Viet Nam did not provide subsidy notifications until March 2013, when it notified details of support programmes applied in 2005-07. Without a more recent update, the information contained in this section can only be considered indicative of the kind of support provided to specific industries or more generally available to encourage investments, regional development, research, etc. Moreover, the Secretariat has no reliable data on debt forgiveness to loss-making state-owned or private enterprises.

Questions:

30. Can Viet Nam provide reliable data on debt forgiveness to loss-making state-owned or private enterprises? How can other WTO members obtain such information?

ANSWER: Viet Nam has not so far maintained any policy to forgive debts to state owned enterprises.

Page 65 (Para 3.79)

The Viet Nam Development Bank (VDB) was established in 2006, based on a reorganization of the Development Assistance Fund. The VDB is a non-profit institution with chartered capital of $\text{đ}10$ trillion. The compulsory reserve ratio of the VDB is 0%, and its solvency is guaranteed by the Government. The VDB raises capital from Vietnamese and foreign sources, and receives funds from the state budget."

Questions:

31. How does the Viet Nam government guarantee the solvency of VDB?
32. In January 2013, the bad debt rate of VDB was 12%. The total bad debt amounted to $\text{đ} 22.6$ trillion, among which $\text{đ} 6$ trillion were resulted by governmental projects. What measures does the Viet Nam government take to deal with the bad debt in VDB and Viet Nam banking system?

ANSWER: According to the Decision 110/2006/QĐ-TTg dated 19/5/2006 of the Prime Minister approving the Charter on organization and operation of the Viet Nam Development Bank (VDB), the operation of VDB is not-for-profit; its compulsory reserve ratio is 0%; it is not be required to enroll in deposit insurance scheme; its solvency is guaranteed by the Government, free of tax and payments to the state budget.

According to this provision, VDB's solvency is guaranteed by the Government for capital mobilized through bonds issuance guaranteed by the Government, or other funds mobilized with guarantee of the Government

As VDB's report, the Non-performing Loan of VDB up to date 31/12/2012 is 12%. However, this Non-performing Loan is included bad debts from many previous years which made under the credit mechanism previously and then handed over to VDB. Implementing the Decision 369/QĐ-TTg dated 28/02/2013 of the Prime Minister approving the development strategy of VDB to 2020, VDB is currently building a scheme of bad debt treatment to submit Prime Minister for consideration and decision. This Scheme is developed to assess the status of the loan balance, bad debt of investment credit and export credit managed by VDB, propose the solution to structure the debt, process and limit the risk arising from overdue debt, bad debt .

Page 72 (Para 3.106)

The basic law for SPS-related matters is set out in the ordinances for plant protection and quarantine, and animal health, and laws on food safety and environmental protection. Under each law there are decrees and decisions setting out more details for implementing the law, and official circulars provide further clarification on some points of the law (Table 3.12). In addition, technical regulations (QCVN) and standards (TCVN) may apply (see above).

Questions:

33. Does the law apply to the traditional Chinese medicine products and health products imported from China? If so, what is the legal document stipulating the application?

ANSWER: Chinese medicine products and health products imported from China shall be regulated by Circular 40/2012/TT-BNNPTNT if they consist of plant subject to quarantine and/or Viet Nam Medicine Law.

Page 78 (Para 3.122)

Viet Nam invites investors, domestic and foreign alike, to undertake investment in the infrastructure and operational development of the zones. The Government supports the development of infrastructure to attract investment in industrial production in "underprivileged" areas of Viet Nam.

Questions:

34. What are the latest Viet Nam preferential policies to attract foreign investment in free zones, special economic zones and industrial zones?

ANSWER: Viet Nam has not adopted new policies on this issue.

Page 79 (Para 3.130)

In May 2010, the Ministry of Industry and Trade issued a list of machinery, equipment, and materials that can be produced domestically. The procurement of such imported goods is thus discouraged in projects involving the use of state funds, and Ministries and People's Committees are to instruct tendering bodies under their authority to apply this list in the evaluation of bids.

Questions:

35. Although Viet Nam is not a party of the Agreement on Government Procurement, it is still an obvious discrimination that the government procurement of imported goods is discouraged in projects involving the use of state funds. Does the Viet Nam government plan to improve the system of government procurement and thus increase its fairness? Please illustrate if there is any.

ANSWER: Government procurement in Viet Nam is regulated by the Law on Procurement 2005, which is built on the basis of and in compliance with international practice and standards and UNCITRAL procurement model law.

Currently, there are considerations to amend the law to further encourage and create favorable and transparent environment to attract investment from organizations and businesses of all economic sectors (including foreign investors and bidders) into infrastructure development on the basis of competitiveness and efficiency enhancement; to increase transparency and openness in tendering activities.

Page 83 (Para 3.143)

Viet Nam identified some state-trading enterprises in its WTO accession package. It also reserved the importation of some goods for state trading (cigars and cigarettes; crude oil and petroleum products; newspapers, journals and periodicals; recorded media for sound or pictures; and aircraft and spacecraft). Nevertheless, Viet Nam has so far not notified to the WTO whether it maintains any state-trading enterprises, within the meaning of Article XVII of the GATT 1994, or the working definition in the Understanding on the Interpretation of Article XVII, trading in these or any other goods. Furthermore, Viet Nam has not submitted periodic reports to the WTO, for the purpose of transparency, on the status of its equitization programme or the reform of equitized enterprises, as indicated in the accession documents

Questions:

36. Can Viet Nam perform its obligation on notifying to WTO by specifically illustrating whether it still maintains any state-trading enterprises?
37. Please illustrate the status of the equitization programme or the reform of equitized enterprises as indicated in Viet Nam's accession documents.

ANSWER: Viet Nam had commitments on state trading enterprises, which are set out in Table 5, working party's report on Viet Nam's accession to the WTO. Since the WTO accession, Viet Nam has fully complied with these commitments. There have not been any changes to the list of committed products subject to state trading enterprises.

Page 87 (Para 3.160)

The NOIP is very active nationally and internationally, for example, in AWGIPC, within ASEAN, and in training and IP awareness campaigns, including public outreach actions. The NOIP has, inter alia, created a Distance Learning Program on IP. A recipient of technical assistance until recently, Viet Nam (through the NOIP) has become a provider of assistance, for example to Lao PDR.

Questions:

38. Concerning intellectual property right protection in the field of traditional medicine, what concrete policies and measures has Viet Nam adopted?

ANSWER: We will provide response to this question at the soonest time.

4. TRADE POLICIES BY SECTOR**Page 97 (Para 4.12)**

Production of all major agricultural products increased steadily in recent years (Table 4.1) and growth has been particularly strong for cashew nuts and cassava, which had average annual growth rates of over 15% from 2000 to 2011.

Questions:

39. What are the main factors that promoted the steady growth of major agricultural products in recent years? Please describe the major agricultural input projects and the changes in input amount in Viet Nam.

ANSWER: The sector has experienced remarkable progresses: the production value and the added value have both increased uninterruptedly for a long period of time, the volume of products and exports have increased through the years, income and living conditions of rural farmers have been improved. The development has been mostly extensive, through the increase of *cropping area, cropping density and more intensive use of inputs (such as labor, capital and materials) as well as the application of new technologies in cultivation such as VietGAP, SRI.*

Page 97 (Para 4.13)

The Law has been further amended over the years, inter alia, to improve the functioning of the market in land-use certificates, allow foreign investment, and permit changes in land use.

Questions:

40. Please detail the legal provisions regarding foreign investment and land use in the agricultural sector in Viet Nam and please provide the document number of related laws and regulations.

ANSWER: Rights and obligations of overseas Vietnamese people, foreign organizations and individuals, that use land are regulated at Section 4, Chapter IV, Land Law 2003 (from Article 118 to Article 121).

Agricultural land used by organizations, overseas Vietnamese, foreign organizations and/or individuals are regulated at Article 73, Land Law 2003.

Page 110 (Para 4.70)

Exploitation of coal and minerals used to manufacture cement is allowed, subject to approved master plans; no further information on these plans was available from the authorities.

Page 121 (Para 4.98)

No data on budgetary outlays and tax expenditure in support of manufacturing activities were available from the authorities.

Questions:

41. Could Viet Nam please publish or provide more details about the plans in support of manufacturing activities?
42. Could Viet Nam please publish data on budgetary outlays and tax expenditure in a series of plans that support manufacturing activities?

ANSWER: Viet Nam does not have any plan to provide supports to these manufacturing activities.

Page 121 (Para 4.97)

As from January 2011, reference prices for risk-assessment purposes have been set for imports of numerous commodities (apparently covering more than 20 product categories) (section 3.2.8). The authorities indicated that these prices are not used to determine the customs value of imported goods as an alternative value or a mechanism for setting the minimum prices, and that Viet Nam's customs valuation practices are in line with its WTO commitments.

Questions:

43. What does "risk-assessment purposes" mean since Viet Nam does not use reference prices to determine the customs value of imported goods as an alternative value or a mechanism for setting the minimum prices? What are the specific methods to set reference prices? What's the consequence if the imported prices of commodities differ from reference prices?

ANSWER: Viet Nam does not use the Reference Prices as a mechanism for the purposes of customs valuation. This is used as a risk assessment tool, helping filter cases exposed to risk in fraudulent declared value by importers. Indeed, this tool is allowed under the Customs Valuation Agreement. Specifically, as defined in Article 17 "there is no provision of this Agreement shall be construed as limiting or questioning of the right of the customs authorities in the implementation of measures to ensure the truthfulness or accuracy of any statement, any documents or any declaration given for customs value determination".

The Reference Prices is not used for determining the price or imposing a custom value of goods and it's not the minimum price. In practice, Viet Nam follows strictly 6 methods provided for under Article VII of the GATT and the Agreement on Customs Valuation.

If an importer want to challenge a valuation, they should enter into a consultation with the customs authorities. This consultation could help to determine the transaction value for custom duty calculation which must be in accordance with the procedures and methods of the CVA Agreement.

Page 122 (Para 4.199)

The development of "support industries" is important and urgent for, *inter alia*, improving "localization", as many local industries, especially producers of export products, rely overwhelmingly on imported feedstock and parts. From 2009, a Politburo campaign "Vietnamese people use Vietnamese products" has allegedly created positive effects and competitiveness for local products in the domestic market; according to a survey conducted by the Institute for Public Opinion, an agency under the Party Central Committee's Commission for Publicity and Education, the popularity of foreign products has declined. Furthermore, in line with the same campaign and as the volume of inventory items (e.g. coal, iron, steel, cast iron, fertilizers, plastic products, cars, motorbikes) remained high, in October 2012 more than ten large state-owned groups belonging to the MOIT signed a voluntary cooperation agreement to use each other's products. The authorities indicated that MOIT publishes the list of goods produced domestically for its enterprises to "freely decide" whether to purchase or not, rather than promoting the consumption of more domestic goods in order to solve difficulties in production and business.

Questions:

44. How does Viet Nam ensure that the Politburo campaign and the cooperation agreement signed by the state-owned groups under the MOIT would not constitute discrimination against foreign products?

ANSWER: Enterprises are not instructed to consume more domestic goods under the campaign. MOIT only publishes the list of goods produced domestically for recommendation purpose, enterprises can freely decide to make transactions or not.

Page 123 (Para 4.101)

In line with the "support industries" promotion objective (section 4.5), the industry is expected to focus on producing cloth and materials for tailoring apparel for export, and to invest to improve high-quality cotton, fibre, and fabric production facilities so as to decrease imports of these items.

Questions:

45. What textile materials are included in the "support industries" promotion objective? What kinds of policies did the Government promulgate to support the development of said industries?
46. What considerations do Viet Nam take into account by placing localization of textile materials as a priority of textile development?
47. Has the Government formulated more specific measures to encourage investment so as to push forward the development of textile materials industries? If so, what's the impact on the import of textile materials? Does Viet Nam encourage its trade partners to invest in its textile materials-related industries?

ANSWER:

- a. Decision 1483 in August, 26th 2011 listed supported industrial products and Official Dispatch 2051 in March, 28th 2012 added several industrial products aiding garment industry, including natural fiber; composite fiber; technical fabrics; nonwoven fabrics; chemicals, dyes; garment accessories, knitting yarn, weaving yarn; thread. Aiding policies are regulated in Decision 12/2011 approval of aiding policies on supporting industries.
- b. Viet Nam's goal is increasing localization ratio in Garment products. Viet Nam Development Strategy for Garment textile to 2015, orientation to 2020 and Development Plan of Garment textile to 2015, orientation to 2020 states
- a. Encouraging all foreign and domestic economic factors invest on garment textile to meet export and domestic demands.

- b. Planning investment projects on textile, dyeing, producing cotton and synthetic fiber, garment materials to attract investors.
- c. Building industrial zones specialized in garment with full capability of producing electricity, water purification as well as satisfying environmental requirements and having educated labor.
- d. Developing administrative procedures in export and investment by cooperation between agencies to better and simplify existing procedures, and requiring agencies to complete in a specific time scope.
- e. Viet Nam has already implemented policies on developing supporting industries, including several garment products and wanted gradually to be able to create garment materials to avoid too dependent on the imported.

Page 124 (Para 4.104)

The 2002 Development strategy until 2010 with orientation until 2020, set ambitious targets for common-type, special-purpose, and high-class vehicles with local-content of up to 60% and meeting over 80% of domestic demand in 2010, depending on the type of vehicle. At end-April 2013, none of these targets had been reached.

Questions:

48. What are the reasons that Viet Nam failed to reach its strategic targets in the automobile industry? Is there a further plan? If so, please describe in detail.

ANSWER: Reasons Viet Nam hasn't achieved targets set out in its development strategy for automobiles are as follows:

Some targets set out in the development strategy are subjective and ambitious; market size of Viet Nam for automobiles is small (150,000 cars/year) while there are too many enterprises (18 FDI enterprises and 38 domestic enterprises).

The supporting industry hasn't been paid attention to develop.

Economic slowdown of the world and region has also affected the performance of the automobile industry.

Currently, the Ministry of Industry and Trade is adjusting the development plan of the automobile industry towards increasing the feasibility. This plan, after being approved by the Prime Minister, will be made public to related investors and enterprises.

Page 124 (Para 4.105)

Domestic producers of motor vehicles are protected by an average MFN tariff more than three times the average for all industrial products (Table A3.1), which encourages "tariff jumping" by foreign-owned car makers.....In addition, between 1 June 2011 and 28 December 2012, imports of motor vehicles for transport of up to nine persons were subject to additional customs documentation and approval requirements (sections 3.2.1 and 4.5). Since April 2009, motor vehicles have been subject to special consumption taxes ranging from 10% to 60% depending on the number of seats and cylinder capacity (Table 3.4). Reduced special consumption tax rates apply to hybrid and bio-fuel vehicles (Table 3.4). Furthermore, local taxes vary, and include a 10%-15% (down from 20%) registration fee for a passenger car of under 10 seats, and a fee for registration papers and number plates

Questions:

49. Does Viet Nam still require additional customs documentation and approval for import of motor vehicles for transport of up to 9 seats?

50. Does Viet Nam have any plan to unify or regulate the local vehicle charges? If so, please describe in detail.

ANSWER: Regarding local vehicle charges, Viet Nam has not yet a plan to unify these charges. It is difficult to adjust or unify the registration fee for all vehicles because it depends on the factual situation in each locality for each kind of vehicle. In case of adjustment, these adjustment shall be public.

With respect to dossier for import car of up to 9 seats vehicles, apart from document requirements as other imports such as declaration, commercial invoice, contract, C/O., the importer has to submit the following documents:

1. Appointment paper or power of attorney as an importer, distributor of the such car maker, trader who trades such type of car or agent contract of the such car maker, trader who trades such type of car which were consular legalized by the overseas-based Viet Nam diplomatic representative agency as prescribed by law: 01 (a) copy certified and sealed true copy of traders.

2. Certificate of car warranty, maintenance establishment with sufficient conditions issued by the Ministry of Transport: 01 (a) copy certified and sealed true copy of traders.

Page 139 (Para 4.140)

As from 2007, Viet Nam has allowed joint ventures with foreign partners to provide telecommunications services related to network infrastructure, such as telephone services, packet-switched data transmission services, circuit-switched data transmission services, telex services, telegraph services, facsimile services, and private leased circuit services.

Questions:

51. Please provide information on the names, number and domestic and foreign shareholdings of existing foreign-invested telecommunication operators in the Vietnamese market.

ANSWER: List of the foreign-invested telecommunication enterprises is provided in the White Book 2012 of Ministry of Information and Communications, please see details in the following website: <http://mic.gov.vn/Attach%20file/sachtrang/Sach%20trang%20ve%20CNTT-TT%202012%20final.pdf>.

Page 143 (Para 4.153)

4.153. Viet Nam has the highest density of vessel traffic globally; it is a gateway to the sea for landlocked neighbouring countries such as Lao PDR and the hinterlands, including north-western Thailand and south eastern China. The total tonnage of the Vietnamese fleet more than doubled between 2005 and 2010 (from 3.4 million DWT to 7.2 million DWT) making it the world's 20th largest fleet; it consisted of 579 vessels, of which 335 cargo, 142 bulk carriers, 48 petroleum tankers, and 23 chemical tankers. The overwhelming majority of these ships are small (under 10,000 DWT each) and lack modern technology (scarcity of skilled professionals also constitutes a problem). The state-owned shipping company, Vinalines, accounts for close to half of the fleet's total tonnage. The average age of Vietnamese ships was about 12 years. At end 2010, several hundred ships of the Vietnamese fleet served on international routes, but few reached regions outside East and South-east Asia. The overseas cargo shipping market is dominated by foreign firms (90% cargo, 100% passengers, in 2011), which have steadily increased their shipping fees and surcharges, thus adversely affecting the international competitiveness of, inter alia, seafood companies, cashew nut exporters, and wooden furniture manufacturers. According to the Viet Nam Ship owners' Association, only 8% of foreign trade is carried by the domestic fleet, and to ease the reliance on foreign fleets, it is necessary to upgrade the domestic fleet so as to handle up to 30% of imports and exports in the near future. The Master Plan on Development of Vietnam's Ocean Shipping Up to 2020 and Orientations Towards 2030 stipulates that by 2020 the Vietnamese fleet's total tonnage should reach 11.8-13.2 million DWT and the volume of goods transported should increase to 215-260 million tonnes.

Questions:

52. Please describe the latest status of the opening-up of the postal and express markets in Viet Nam and the specific requirements for qualifications and examination and approval procedures for foreign investment.

ANSWER: The openness of the postal market was done through WTO commitments. The investment and operation in the postal sector is conducted in associated with the Law on Postal and related documents, then:

- No restrictions on the form of business and capital ratio of foreign investors.
- The project with foreign investment should be examined under the provisions of the Law on Postal and other investment laws.
- The conditions of doing business in postal sector are specified in the provisions of the Law on postal and Decree 47/2011/ND-CP.
- Documents, procedures and licensing authority are specified in Decree 47/2011/ND-CP.

Pursuant to Decree 47/2011/ND-CP on guiding in detail some articles of Law on Post, some requirements for foreign investors are as follows:

For Verification of investment project:

Projects with foreign capital under VND 15 billions must be verified but not required to submit to the Prime Minister for decision of investment policies.

Projects with foreign capital from VND 15 billions or more than must be verified before submitting to the Prime Minister for decision of investment policies.

Conditions for investment: foreign investors can establish joint venture with Vietnamese investors with the rate of the foreign investors no higher than 51% or can establish 100% foreign owned enterprise from the date of 11 January 2012.

Licensing:

- be in conformity with the project to be verified by the State authority.
- be in conformity with the requirements of specific regulations on post.
- In case of refuse for grant of postal license, written confirmation of notification on postal activities, in time limit specified in clause 2 of this Article, the state agency with competence in grant of postal license, written confirmation of notification on postal activities must notify in writing and clearly stating reason.

Page 143 (Para 4.153)

The overseas cargo shipping market is dominated by foreign firms (90% cargo, 100% passengers, in 2011), which have steadily increased their shipping fees and surcharges, thus adversely affecting the international competitiveness of, *inter alia*, seafood companies, cashew nut exporters, and wooden furniture manufacturers. According to the Viet Nam Ship owners' Association, only 8% of foreign trade is carried by the domestic fleet, and to ease the reliance on foreign fleets, it is necessary to upgrade the domestic fleet so as to handle up to 30% of imports and exports in the near future. The Master Plan on Development of Vietnam's Ocean Shipping Up to 2020 and Orientations Towards 2030 stipulates that by 2020 the Vietnamese fleet's total tonnage should reach 11.8-13.2 million DWT and the volume of goods transported should increase to 215-260 million tonnes.

Questions:

53. Please describe the ranking of foreign shipping firms that currently engage in international marine transportation in Viet Nam.
54. Does Viet Nam have any laws or rules that regulate the act of foreign airline companies to charge additional fees? If so, please describe in detail. If no, does Viet Nam have any legislation plan?
55. Does Viet Nam have any specific action plan and timetable to realize the "Master Plan on Development of Viet Nam's Ocean Shipping"? If so, please describe in detail.

ANSWER:

53. There are about 100 enterprises which operating in logistics services in Viet Nam. This number is higher in comparison with Thailand and Singapore.

Viet Nam ranks 53rd in the world and 5th in the region with an average growth rate of 20% per year, but we must also acknowledge this results mainly from the contribution of the business activities of foreign logistics. Currently, in Viet Nam there are about 30 foreign business enterprises on logistics services, a large number of leading companies in its market share in Viet Nam which is Maersk Logistics, APL Logistics, NYK Logistics, MOL Logistics, etc. They make up more than 80% market share in Viet Nam

54. The imposition of additional charges, for instance fuel surcharges, is at the airline's discretion

55. Pursuant to Decision No 1601/QD-TTg on approving the Master Plan on development of ocean shipping of Viet Nam up to 2020 and orientation towards 2030, the general plan on development of ocean shipping of Viet Nam is that:

For ocean shipping

To raise the quality of ocean shipping services to meet domestic ocean shipping needs; to increase the market share of shipping of imports and exports to 27-30% and transport cargo for foreign partners on long maritime routes. The volume of cargo to be transported by the Vietnamese fleet will reach 110-126 million tons by 2015 and 215-260 million tons by 2020 and increase 1.5-2 times over 2020 by 2030. The number of passengers will reach 5 million by 2015 and 9-10 million by 2020 and increase 1.5 times over 2020 by 2030;

To develop the Vietnamese fleet to be modern, attaching importance to special-use ships (container ships, bulky cargo ships, oil tankers, etc.) and large-tonnage ships. The total tonnage will be 6-6.5 million DWT by 2010, 8.5-9.5 million DWT by 2015, and 11.5-13.5 million DWT by 2020. To step by step build new ships for the Vietnamese fleet with an average age of 12 years by 2020.

Seaport system

From now to 2020 and 2030, to develop complete and modern seaports and access channels. To accelerate the construction of seaports, making focal investment in locations with conditions and needs with a view to exploiting their natural advantages and making use of ocean shipping for national economic development and for use as a basis for building and developing Vietnam's seaport system under a national master plan. To form transport infrastructure connection centers in regions, especially in key economic regions and large economic zones and industrial parks. To develop large international transshipment ports and gateway ports in appropriate regions in order to affirm the position and advantages of marine economy, creating important hubs for economic exchange between Vietnam and other countries for the attainment of the marine strategy's objectives.

Shipbuilding industry

By 2020, to develop the country's shipbuilding industry to the advanced level in the region. To build new cargo ships of up to 300,000 DWT. Passenger, petroleum service, salvage and rescue, and maritime security ships will meet 65-70% of the demand for a bigger domestic fleet during 2010-2020. To repair ship shells, engines and electric and electronic systems of ships of up to 400.000 DWT. meeting socio-economic development requirements and increasing export to earn foreign currencies for the country;

To develop in a balanced manner both ship building and repair. To speedily access modern technologies and attach importance to in-depth investment for promoting the efficiency of existing ship building and repair yards, even supporting industries.

Maritime services

To develop ocean-shipping support services in a coordinated manner, especially quality logistic and multimodal transportation services, proceeding to provide packaged services and services overseas to meet integration requirements. To form domestic ports in line with the development of economic corridors and cargo distribution centers linked with seaports:

To develop in a coordinated manner logistics, maritime security and search and rescue establishments as well as maritime information-technology systems to meet development requirements and comply with international conventions.

Page 144 (Para 4.156)

According to the authorities, in 2011 36% of overall inland cargo transportation was undertaken by foreign vessels while the all passenger transportation was ensured by vessels flying the Vietnamese flag. Under the 2005 Viet Nam Maritime Code, priority is granted to Vietnamese ships in the carriage of cargo and of passengers and luggage between Vietnamese seaports; foreign sea-going ships may be permitted to perform this carriage whenever Vietnamese ships are not in a position to do so. A June 2012 MOT document stipulated the temporary halt of the presence of ships under foreign flags in the domestic container shipping market. From 1 January 2013, extension of expired licences and the granting of new licences to the ships under foreign flags have been suspended.

Questions:

56. Please explain why 36% of overall inland cargo transportation in Viet Nam was undertaken by foreign vessels in 2011? What are the changes in such market share since 2011.

ANSWER: No countries open their markets for foreign vessels to undertake the inland cargo transportation services. Viet Nam is a developing country with huge demand for export and import; thus, we have flexibilities in allowing vessels flying foreign flags to undertake the inland cargo transportation for a certain period to gather goods for intermediate transfer of mother-vessels with routs to Europe and Western and Eastern banks of the US in the international transit ports of Cai Mep-Thi Vai or to collect container bodies of those mother-vessels.

Currently, Vietnamese cargo transportation enterprises are improving their vessel capacity to gradually replace foreign vessels to undertake the inland cargo transportation services.

57. Please explain why did Viet Nam suspend the granting of new licenses to the ships under foreign flags.

ANSWER: In parallel with allowing Vietnamese vessel to undertake inland transportation, we only grant licenses for foreign vessels to stop over in Cai Mep -Thi Vai port for intermediate transfer of Vietnamese exports and imports to Europe and Western and Eastern banks of the US.

The inland cargo transportation is undertaken by the Vietnamese vessels, thus we don't allow foreign vessels to do so. Furthermore, we are increasing the amount of container carriage vessels to improve domestic capacity of the inland transportation (we allowed 15-20 foreign vessels to do

as feeders in 2011 and now there are only 04 foreign vessels to undertake the inland cargo carriage).

Page 148 (Para 4.169)

The aviation industry is under the principal jurisdiction and management of the Civil Aviation Administration of Viet Nam (CAAV), a government agency reporting to the MOT. Its functions include: formulating plans and programmes to develop civil aviation; drafting legal normative documents, regulations, and standards relating to civil aviation; information dissemination and education on aviation law; aviation safety and security; airport, aircraft, and flight management; environmental protection; search and rescue; flood prevention; ratifying air fares proposed by airlines operating in Viet Nam; research and development; handling complaints and/or violations of aviation law; administrative reform; and financial and personnel affairs. Under the existing regulations, slot allocation is carried out by the CAAV in accordance with the principles of: publicity, transparency, and non-discrimination; observance of the physical capacity of the airports; convenience and effectiveness; and alignment to international experience. Following the merger of the Northern, Middle, and Southern Airports Corporations into the \$14.7 trillion Airports Corporation of Viet Nam (ACV), a single state-owned entity has been responsible for a variety of tasks since February 2012, including the use and development of airport facilities and equipment (e.g. land and buildings, the security and safety of aviation activities, and the collection of airport-related revenue), and importing and exporting aviation equipment. Air traffic control is provided by Viet Nam Air Traffic Management (VATM).

Questions:

58. Is the investigation authority of civil aircraft accidents and accident signs independent from CAAV? Please provide the contact of the said authority.
59. Has the investigation of civil aircraft accidents and accident signs in Viet Nam complied with the relevant standards, suggestions and measures set out in Annex XIII "Investigation on Aircraft Accidents and Accident Signs" attached to the Convention on International Civil Aviation?

ANSWER: The investigation of civil aircraft incident and accidents is the responsibility of the Civil Aviation Authority of Viet Nam (CAAV). Viet Nam fully follows the provisions set out in Annex XIII "Investigation on Aircraft Accidents and Accident Signs" attached to the Convention on International Civil Aviation"

GOVERNMENT REPORT

2. ECONOMIC DEVELOPMENT AND TRADE POLICIES

Page 9 (Para 2.12)

"More recently, in May 2011, the Prime Minister issued Decision No. 732/QD-TTg ("Decision 732") approving the tax reform strategy for the period 2011-2020 regarding tax policy and tax management. Under the Decision, there are 10 tax categories that shall be reformed, including (1) value-added tax (VAT), (2) corporate income tax (CIT), (3) personal income tax (PIT), (4) special consumption tax, (5) import-export taxes, (6) royalty tax, (7) agricultural land use tax; (8) non-agricultural land use tax; (9) environmental protection tax, and (10) fees and charges. Accordingly ... Import tax and related trade barriers would be reduced to facilitate free trade. ..."

Questions:

60. What are the specific measures to reduce import tax and related trade barriers in the tax reform strategy for the period 2011-2012 regarding tax policy and tax management issued in Viet Nam?

ANSWER: Viet Nam has been and will be adhering to its WTO tariff commitments, including the relevant reduction schedule.

Page 11 (Para 2.21)

The Law applies to all business enterprises and professional and trade associations in Viet Nam; overseas enterprises and associations registered in Viet Nam; public utilities and state monopoly enterprises; and State administrative bodies.

Questions:

61. Are there any specific investigation cases on various types of market players by the competition law enforcement agency in Viet Nam? Please illustrate.

ANSWER: Since the enactment of Competition Law until now, Viet Nam Competition Authority (VCA) has conducted investigations on 10 formal cases on competition restriction practices. Among those, there are three cases with final decisions made by the Viet Nam Competition Council. Typical cases are as following:

Abuse of dominant position in the aircraft fuel market (2008)

In April 2008, Viet Nam Air Petrol Company (Vinapco), an affiliate of the State-owned company Viet Nam Airlines, terminated supplying aircraft fuel to a privately-held company - Jetstar Pacific Airline (JPA), causing a number of JPA flights to be delayed and cancelled.

After a preliminary investigation that showed the likelihood of an abuse by Vinapco, the VCA initiated an official investigation and submitted a case report to the Viet Nam Competition Council (VCC), which, after having confirmed the abuse of monopolistic power, imposed on Vinapco a fine of VND 3.4 billion.

Competition restriction agreement among 19 insurance companies

In September 2008, Viet Nam Insurance Association hosted the CEO conference for non-life insurance firms and signed cooperation agreements in the field of cargo insurance, vessel insurance, vehicle insurance and terms on insurance premium rates for physical damage to cars. There were 19 insurance companies including Vietnamese state-owned enterprises, Joint stock companies as well as foreign companies operating in Vietnam.

The prelitigation investigation revealed some signs of violation against Competition Law. After that, VCA issued its decision to launch an official investigation into the case of competition restriction agreement.

In July 2010, VCC decided to fine the 19 insurance companies at 0.025% of total turnover of the fiscal year 2009 (total fine amount was 1.7 billion VND).

Page 15 (Para 2.48)

For services with network infrastructure, the foreign ownership in joint venture cannot exceed 49% (for basic services) and 50% (for value-added services) of chartered capital of the joint-venture company; and ownership of 51% is considered as the party has controlling power over its governance. For services without network infrastructure, the foreign ownership in a joint venture cannot exceed 70% (for Virtual Private Network services) and 65% (for other services) of the chartered capital of the joint-venture company.

Questions:

62. For services with network infrastructure, how to differentiate basic services from value-added services?

ANSWER:

The Decree No. 25/2011/ND-CP dated 06 April, 2011 detailing and guiding for implementation of some articles of the Law on Telecommunications stipulates the classification of telecommunication

services in which listed the basic telecommunication services and the value-added telecommunication services at Article 9. Vietnam's understanding of such services is similar to those definitions in the WTO.

OTHER QUESTIONS

63. Please detail the policy and measures taken by Viet Nam to support the production and trade of tropic fruits.

ANSWER: Decision 142/2009/QD-TTg of Prime Minister on mechanism, policies of support of plant varieties, livestock, fisheries for production restoration of areas damaged by natural disasters, epidemics.

64. Please detail the policy and measures taken by Viet Nam to support the development of fishery industry and the trade of aquatic products.

ANSWER: Rising oil price in the year 2007, 2008 directly affected the lives of poor coastal fishermen. To help them overcome difficulties at that time, Prime Minister issued Decision 289/QD-TTg promulgating policies to support ethnic minorities, social policy households, poor and near-poor households and fishery households. The main purpose of these policies is to address the intermediate social security for the poor and near poor, including poor coastal fishermen.

65. Please detail the legal provisions on protection of new varieties of crops and provide related laws and regulations in English.

ANSWER: Please go to website pvpo.mard.gov.vn for details.

Questions:

Decree Making Detailed Provisions for Implementation of Ordinance Against Dumping of Imported Goods into Vietnam

It is stipulated in the Decree that : "Persons involved in the process of handling anti-dumping cases include..., Other interested parties."

Questions:

66. If the Defendant is merely a trader, is it entitled to separate tariff in response to anti-dumping investigation?

ANSWER: The Antidumping Agreement (ADA) and Viet Nam law on antidumping have no clear guidelines on this issue. If the Defendant is a mere trader (i.e. it does not produce the product under investigation and does not sell the product under investigation in the domestic market), the investigation authority will consider on case by case basis.

It is stipulated in the Decree that : For those Defendants who are not included in the sample for investigation, their dumping margin shall be defined as the weighted average of the dumping margins determined for the Defendant(s) that are included in the sample as prescribed in paragraph 2 of this Article."

Questions:

67. This clause has provided for the dumping margin applicable to enterprises which are not included in the sample for investigation. Is the weighted average of the dumping margins applicable to enterprises that do not respond to the investigation?

ANSWER: Article 25.4 of Decree 90/2005/ND-CP provides for the dumping margin applicable to the enterprises which are not included in the sample for investigation, accordingly, as a rule, margin is calculated on the basis of weighted average of the dumping margins determined for respondents selected in the sample, except for zero or de minimis rates or rate on basis of facts

available. It is the weighted average of the dumping margins applicable to enterprises that are not selected. However, voluntary respondents with full co-operation may also be considered to get individual margin by the investigating authority pursuant to Article 25.5 of Decree 90/2005/ND-CP.

Questions:

68. Are foreigners allowed to set up accounting firms in Viet Nam? Are there any restrictions on the business scope of such accounting firms? And are there any special regulatory measures?

ANSWER: According to Article 36 of Law on Independent Audit No.67/2011/QH12 dated 29/3/2011, a foreign auditing organization shall be permitted to conduct auditing activities in Viet Nam in the following forms:

- Capital contribution with an auditing enterprise already established and operating in Viet Nam in order to establish an auditing enterprise.
- Establishment of a branch of the foreign auditing enterprise.
- Providing cross-border auditing services in accordance with Government regulations.

According to Article 30 of Law on Independent Audit and Article 9 of Decree No.17/2012/ND-CP dated 13/3/2012 detailing and guiding the implementation of a number of articles of the Law on independent audit, there are provisions on cases where the audit firms and branches of foreign audit firms in Viet Nam are not entitled to audit; Chapter 3 of Decree 17 also has provisions on subjects, conditions and mode of providing the auditing service across border, and responsibilities of foreign audit firms as well as Viet Nam audit firms who are partnership of foreign audit firms in providing auditing service across border.

Questions:

69. Are foreigners allowed to be the partners or other senior management of an accounting firm in Viet Nam? If so, please detail the specific requirements for related professional qualifications, identity cards, residential status and other aspects.

ANSWER: Viet Nam regulations on independent audit have no prohibition of foreigners who are capital contributor or senior manager of auditing firms. However, legal representative, director or director general of a limited liability company or a partnership must be practising auditors; the owner of a private enterprise must be concurrently the director and a practising auditor of the enterprise.

Practising auditors have to meet requirements provided in Article 15 Law on Independent Audit regarding to Registration of Auditing Practices. The current regulations on independent audit services have no specific provisions on conditions of residency in Vietnam.

Questions:

70. For a foreign certified accountant who would provide accounting services in Viet Nam, is he or she subject to related free-trade zone agreements or mutual agreements? Are there any restrictions on the time of stay, residential status or other aspects?

ANSWER: Foreigners who would provide accounting services in Viet Nam is subjects to Law on Accounting, Law on Independent Auditing and other related regulations.

Foreign certified accountants who would provide auditing services in Viet Nam must have Audit practitioner certificates issued by the Ministry of Finance of Viet Nam and have to register as practising auditors. People having Accounting expert certificates or Audit practitioner certificates, issued by foreign professional organizations that are accredited by the Ministry of Finance of Viet Nam (according to Article 10, Circular 129/2012/TT-BTC dated 09/8/2012 on the exams for and issuance of the Audit practitioner certificates and Accounting practitioner certificates), wishing to

be issued with Audit practitioner certificates or Accounting practitioner certificates of Viet Nam must take the test on Vietnam's laws (in Vietnamese) and if they pass the test, they will be granted Audit practitioner certificates by the Ministry of Finance of Vietnam. After being granted certificates, auditors have to register as practising auditors to practising auditing services in Vietnam. The registration of Auditing Practices provided in Article 15 Law on Independent Audit, including specific conditions (for example: being an auditor, having conducted auditing work for more than 36 months from graduation of bachelor degree; fully participating in the programs to updated knowledges regarding to regulations of the Viet Nam Ministry of Finance). The current regulations on independent audit services have no specific provisions about conditions of residency in Vietnam.

Questions:

71. Are foreign-invested advertising companies in Viet Nam entitled to national treatments?

ANSWER: According to the Ordinance on Advertising and Advertising Law No. 16/2012/QH13 dated 21.06.2012, entered into force from 01/01/2013, there is no discrimination between foreign invested companies and Viet Nam's companies in the advertising sector.

Questions:

72. Please introduce the legal system of advertisement administration in Viet Nam.

ANSWER: Advertising Law No. 16/2012/QH13 dated 06/21/2012 and entered into force from 01/01/2013. Draft Decree guiding the implementation of Law on Advertising is being submitted to the Government for approval.

Questions:

73. Please further describe the rules and policies on the operational supervision systems of foreign aviation companies.

ANSWER: With regard to foreign-owned aviation company, the foreign equity shall not exceed more than 30% of charter capital of the company. The equity held by one Vietnamese individual or Vietnamese legal entity having no foreign capital shall be the majority.

The foreign nationals being involved in management of the foreign-owned aviation company shall not account for more than one third of the management machinery. The CEO or legal representative of the company shall be Vietnamese nationals without bearing any other nationality.

(In accordance with Article 11 of the Governmental Decree 30/2013/NĐ-CP dated April 08 2013 on Air Transportation Business and General Aviation Operation).

Questions:

74. What are the differences between the requirements and measures for domestic and foreign aviation companies in respect of the protection of consumers' rights and interests?

ANSWER: There are no differences between the requirements and measures for domestic and foreign aviation companies in respect of the protection of consumers' rights and interests

Questions:

75. Please describe the airspace administration regime and the operation regime of air traffic control in Viet Nam.

ANSWER: The regime concerned is described in AIP Vietnam.

Questions:

76. It is said that foreign investors have been paying more attention to the e-commerce industry in Viet Nam. Investments in the e-commerce industry by foreign investors were mainly indirect before 2011. However, direct investments are increasing since 2012, which has reached to approximately USD 100 million. What are policies adopted by Viet Nam to attract foreign investments in the e-commerce industry? And what are the measures to promote cross-border trade in services?

ANSWER: Policies which are adopted by Viet Nam to attract foreign investments and promote cross-border trade in the e-commerce industry:

1. The Prime Minister's Decision No. 1073/QĐ-TTg dated July 12, 2010 approving the Master plan on e-commerce development during 2011-2015:

- Section I. General objectives (Article 1, Part A. Objectives): E-commerce will become common and reach the advanced level of the members of the Association of Southeast Asian Nations (ASEAN), contributing to improving the competitiveness of enterprises and the nation, thereby accelerating the process of national industrialization and modernization.
- Section I. Perfection of the system of legal documents on e-commerce (Article 1, Part B. Contents): To review and revise existing relevant policies and legal documents and promulgate new ones to support and facilitate the development of e-commerce and make it conformable with international practice and Vietnam's international commitments.
- Section III. Online provision of public services related to production and business operations (Article 1, Part B. Contents): To intensify the online provision of public services related to production and business operations in accordance with international commitments on paperless trading in the following sectors:
 - 1) Taxation, customs, export, import, investment, business registration and other public services directly related to production and business operations.
 - 2) Online provision of information on foreign markets in Vietnamese to Vietnamese enterprises and information on the Vietnamese market in English and a number of common foreign languages to foreign enterprises.
 - 3) Exchange of e-documents related to management of the export or import of goods and services with foreign parties.
 - 4) Provision of information on state-funded projects, information on bidding for governmental procurements and step-by-step organization of online bidding for governmental procurements.
 - 5) Public disclosure of information on enterprises and their production or business operations.
- Section V. Improvement of state management effectiveness and capacity (Article 1, Part B. Contents):

Intensifying international cooperation in e-commerce:

- a) To actively participate in international cooperation in e-commerce and relevant areas with international or regional economic and trade organizations, the United Nations' trade organizations, multilateral or bilateral trade organizations, and other trade partners:
- b) To encourage socio-professional organizations and enterprises to cooperate with foreign partners in creating an environment for development of international e-commerce. Intensifying activities of cross-border online business and technology transfer.

2. Decree No. 52/2013/ND-CP dated May 16, 2013 of the Government on E-commerce:

Article 7: Program of national e-commerce's development

1. The State has the appropriate policies and measures in order to promote the e-commerce to develop transparently and sustainably through the Program of national e-commerce development.

2. The contents of the Program of national e-commerce development include: a) Building and developing the infrastructure of e-commerce; b) Propagating, disseminating and raising awareness of e-commerce; c) Training and developing human resource of e-commerce; d) Developing products and solutions of e-commerce; e) Consulting the development of e-commerce application plan; g) Performing international cooperation of e-commerce; h) Raising management capacity and organizing activities of e-commerce development; i) Other contents.

3. Decree No. 72/2013/ND-CP dated July 15, 2013 of the Government on the management, provision and use of Internet and online information:

Article 4. Policies on the development and management of Internet and online information

Intensifying international cooperation on Internet based on respect for the principles of independence, sovereignty, equality, mutual benefit, conformity with Vietnam's law and the International Agreements to which the Socialist Republic of Viet Nam is a signatory.

**QUESTIONS FROM THE SEPARATE CUSTOMS TERRITORY OF
TAIWAN, PENGHU, KINMEN, AND MATSU**

PART I: REGARDING THE SECRETARIAT REPORT (WT/TPR/S/287)

ECONOMIC ENVIRONMENT

1.6 Trends and Patterns in Foreign Direct Investment

Page 27 (Para 1.25)

Following its WTO accession, Viet Nam's foreign direct investment (FDI), surged together with a boom in the stock exchange and the real estate sector. FDI inflows peaked in 2008, then dropped to a low in 2011 as a result of investors' worries about high inflation, currency depreciation, and strained public finances; FDI inflows rose again in 2012. Furthermore, between 2008 and 2011, the total value of licensed projects fell by almost 75%, then rose slightly in 2012. Nevertheless, according to the authorities, disbursed FDI remained stable over the years (US\$10 billion to US\$11 billion) and a number of measures were undertaken to attract FDI. In 2012, inward FDI in the form of licensed projects originated mainly from Japan, Chinese Taipei, Singapore, and the EU; 71.6% of the projects were in manufacturing, while services attracted another 26.2%. During 2009-11, Viet Nam attracted 11.5% of all Asia-Pacific "Greenfield" FDI, mainly in the coal, oil, and natural gas industry. Viet Nam aims to attract US\$15 billion in FDI in 2013.

Question(s):

1. What concrete measures does Viet Nam plan to adopt in order to attract FDI?

ANSWER: To improve investment environment and attract FDI, the Government has promulgated Resolution No. 103/NQ-CP dated 29th August, 2013 on the direction of enhancing efficiency in FDI attraction, use and management in the coming time. Resolution No. 103/NQ-CP has identified the key viewpoints as follows:

- Foreign-invested economy is part of Viet Nam's economy, which is encouraged for sustainable development, guaranteed of legitimate rights and interests and fair treatment on the basis of cooperation for mutual benefits and compliance with international commitments that Viet Nam is a party.
- FDI plays as a key source of economic power, which is combined with domestic resources to create the consolidated strength to achieve the target of industrialisation and modernisation and economic restructuring.

Basing on the above-mentioned viewpoints, the Resolution No. 103/NQ-CP has indicated the following solutions:

- Perfecting the investment-related legal system in the consistent, public, transparent and predictable manner to be more investor-favourable and regionally competitive.
- Considering amendment of the Law on Enterprise to continue improving investment environment, building favourable and transparent legal framework for establishment, operation and closure of enterprises of all economic sectors.
- Comprehensively reviewing the legal system, with the primary focus on investment and business related laws, such as the Land Law, Construction Law, Law on Environment Protection, Law on High Technologies, Law on Technology Transfer, and Law on Real Estate Trading, to assure their consistency with the Law on Investment.
- Amending and promulgating new policies to encourage domestic and foreign investments in the infrastructure sector.

- Strengthening mechanisms and policies to attract FDI into supporting industries and high-tech sectors.
- Continuing the process of simplifying investment administrative procedures.

3 TRADE POLICIES AND PRACTICES BY MEASURE

3.2 Measures Directly Affecting Imports

3.2.7 Import Prohibitions, Restrictions, and Licensing

Page 57 (Para 3.44)

In April 2010 the Ministry of Industry and Trade promulgated a long list of "non-essential" imported commodities and consumer goods not encouraged for import.⁴ The State Bank of Viet Nam subsequently instructed credit institutions to consider carefully or restrict the provision of foreign currency loans to finance imports of the listed items. The list was expanded in 2011, as Decision 1899 was replaced by Decision No. 1380/QD-BCT of 25 March 2011. Among the discouraged items are live animals, dairy products, sugar confectionary, fish and crustaceans, and table salt.

It is our understanding that the State Bank of Viet Nam strictly regulates the sale of foreign currency and, in addition, other agencies enforce regulatory measures on certain categories of imports. For example, Viet Nam's Ministry of Industry and Trade requires businesses selling imported automobiles, cosmetics, alcoholic beverages, cell phones, and other products to have a certificate from the overseas business empowering it to sell the branded goods in Viet Nam. We have been informed that one of our businesses in Viet Nam, which had originally sold Nissan cars there manufactured by Yulon Motors in the Separate Customs Territory of Taiwan, Penghu, Kinmen and Matsu, suddenly found itself unable to continue importing the cars because it could not obtain the required certificate authorizing it to do so.

Question(s):

2. Could the government of Viet Nam please confirm that these additional trade regulatory measures do not create non-tariff barriers, and that they are conducive to normalized trade?

ANSWER: List of "non-essential" imported commodities and consumer goods not encouraged for import issued by the Ministry of Industry and Trade of Viet Nam is a reference document for relevant ministries and agencies to develop policies consistent with WTO, such as increase or decrease in MFN tax in line with the international commitments of Viet Nam and application of technical measures to trade in line with TBT Agreement in WTO. This Decision of the Ministry of Industry and Trade of Viet Nam is not a legal and mandatory document.

The issuance of this Decision is completely not intended to restrict the provision of foreign currency loans to finance imports of the listed items. Commercial banks and credit institutions in Viet Nam have the right to decide, in accordance with current legislation, which enterprises to provide foreign currency loans to import goods (without any discrimination between essential and non-essential goods).

3.4 Measures Affecting Production and Trade

3.4.2 Standards, Technical Requirements, and Conformity Assessment

3.4.2.2 Sanitary and Phytosanitary Measures

3.4.2.2.1 Quarantine

Page 76 (Para 3.114)

The Report states that, according to Decree No. 02/2007/ND-CP, an import consignment of plants: must be accompanied by a phytosanitary certificate from the competent authority of the exporting country; must be free of regulated pests; must have an import plant quarantine permit from the Department of Plant Protection in the Ministry of Agriculture and Rural Development for objects

⁴ Decision No. 1899/2010/QD-BCT of 16 April 2010. The initial list covered some 1,500 tariff lines.

subject to pest-risk analysis (PRA); and wood packaging must undergo phytosanitary treatment. Objects subject to pest-risk analysis include: living plants, fresh fruits, weeds, weed seeds, beneficial organisms, biological agents or living organisms harmful to plant resources, untreated timber, etc., etc. ...

Question(s):

3. Could Viet Nam please describe how Decree No. 02/2007/ND-CP applies to the pest-risk analysis currently requested on import consignments of plants?
4. How many countries' pest-risk analyses and how many kinds of plant products in those countries have been approved?
5. Do any databases or references of completed pest-risk analyses exist that could be offered to importers or interested trading companies?

ANSWER: The implementation of Decree 02/2007/ND-CP are detailed regulated in Circular 39/2012/TT-BNNPTNT on conditions and Decision 48/2007/QĐ-BNN on procedure. Viet Nam willing to provide copy of the two documents. They could also be downloaded from Government website.

Detailed information on countries and products that have been approved is variety and due to limited resources, currently Viet Nam does not have official website on the information. Nevertheless, Plant Protection Department establish a One Stop Shop that play a role of help desk to provide information per request. It is recommended that interesting Member to contact to Plant Protection Department or National Notification Authority to have detailed information on specific interested products.

4. TRADE POLICIES BY SECTOR

4.4 Mining and Energy

4.4.2 Energy

Page 112 (Para 4.75)

In 2007, Prime Minister's Decision No. 130 provided for tax breaks, land-leasing preference, and investment credits for a Clean Development Mechanism (CDM) also covering wind power plants, as part of a global UN initiative; the government indicated its intention to subsidize some CDM projects through the Viet Nam Environmental Protection Fund.

Question(s):

6. We understand that Decision No. 130, Article 5, paragraph 1 (g) provides that a clean development mechanism project needs to comply with procedures and guiding principles set by the Ministry of Natural Resources and Environment in order to obtain permission. Could Viet Nam please describe the content of these guiding principles?
7. In addition, Article 6, paragraph 1 (b) provides that a qualified clean development mechanism project may be considered for a subsidy grant. What are the specific requirements for this subsidy?
8. Do foreign investors enjoy the same treatments?

ANSWER: Article 5 (paragraph 1g) of Decision No.130/2007/QĐ-TTg provides that CDM projects have to build in accordance with the procedures for CDM projects, the Ministry of Natural Resources and Environment gives the Confirmation Letter or Approval Letter.

Ministry of Natural Resources and Environment issued Circular No. 15/2011/TT-BTNMT 12/2010/TT-BTNMT and amending and supplementing a number of provisions in Circular 12/2010/TT- BTNMT on building, granting Confirmation Letter, Approval Letter of CDM projects under the Kyoto Protocol.

Accordingly, paragraph 4 of Article 1 of Circular No. 15/2011/TT-BTNMT specified on the procedures, revision time, granting and effect of Approval Letter of PDD or PoA-DD.

The investors are treated equally, no discrimination between investors

4. TRADE POLICIES BY SECTOR

4.6 Services

4.6.4 Financial Services

4.6.4.1 Banking and finance

Page 132 (Para 4.123)

The Report indicates that, as from April 2007, foreign credit institutions have been permitted to establish commercial presences in Viet Nam in a number of forms including representative offices, branches of foreign commercial banks; commercial joint venture banks with foreign capital contribution not exceeding 50% of charter capital; and banks with 100% foreign-owned capital.

However, according to the website of the State Bank of Viet Nam (SBV), the SBV has not approved the establishment of any branch of a foreign bank in Viet Nam since May 2011.

Question(s):

9. Could the government of Viet Nam please elaborate further on its policy and application procedures for allowing new market entrants into the banking sector, in particular the procedures for granting licences to new branches of foreign banks?

ANSWER: Regulations on conditions and procedures to be licensed to operate in financial and banking sector are set out in Law on Credit institutions issued in June, 2010, came into effect from January 1, 2011 (Law on Credit institutions 2010) and are specified in Circular No 40/2011/TT-NHNN issued on December 15, 2011 which regulates licensing and operating procedures of commercial banks, branches or representative offices of commercial banks, foreign credit institutions and other foreign institutions operating banking services in Viet Nam. In the coming time, Viet Nam will continue applying those conditions and procedures for licencing representative offices or branches of foreign commercial banks.

The legal documents are available on SBV's website: <http://www.sbv.gov.vn>.

Page 133 (Para 4.125)

Supervisory and inspection functions over the financial sector are shared between the SBV, in charge of the monetary and banking sector, and the MOF for securities and insurance (section 4.6.4.2). A National Financial Supervisory Commission provides advice to the Prime Minister for coordinating the national financial market supervision (banking, insurance, securities) and assistance for monitoring the national financial market.

Question(s):

10. How does the National Financial Supervisory Commission assist the SBV and the MOF in supervising the national financial market?
11. Can it give instructions to the other two agencies?

ANSWER: Regarding the supervisory and inspection functions, the SBV and the National Financial Supervisory Commission play separately roles:

- (i) The SBV implement the state management of monetary and banking policy, sectoral monetary and banking inspection and supervision.

For greater certainty, pursuant to Art. 52 of the Law on the State Bank, the SBV implement the tasks of banking inspection on the following entities:

-
- Credit institutions, branches of foreign banks, representative offices of foreign credit institutions and other foreign institutions conducting banking operations. When necessary, the State Bank shall request competent state agencies to inspect or coordinate with it in inspecting subsidiary companies or associated companies of credit institutions:
 - Institutions conducting foreign exchange operations or gold trading activities; organizations engaged in credit information activities; and non-bank institutions providing intermediary payment services.
 - Vietnamese agencies, organizations and individuals and foreign agencies, organizations and individuals in Viet Nam regarding the compliance with the monetary and banking laws under the state management of the State Bank.

Regarding the organizational structure, the Banking Supervisory Agency was formed and has operated since August 1, 2009 pursuant to Decision No. 83/2009/QĐ-TTg issued by the Prime Minister, with the merger of Department of Banking Inspection, Department of Banks, Department of Cooperation Credit Agencies and Center for money laundering prevention. The formulation of the Agency can be considered as a breakthrough and shows great effort of Viet Nam in order to strengthen the effectiveness and efficiency of the inspection and supervision activities, and helps SBV's regulation on banking inspection to engage more closely to international banking inspection and supervision practice.

In short, the SBV performs its function of inspection and supervision in the monetary and banking sector.

(ii) The National Financial Supervisory Agency acts as an advisory agency for the Prime Minister to coordinating the national financial market supervision (in all three sectors of Banking, Insurance, Securities and to assist the Prime Minister in monitoring the national financial market.

Some of the specific mandates of the National Financial Supervisory Agency includes: (i) to submit to the Prime Minister for issuance of regulations on coordinating the national financial market supervision (in banking, insurance and security sector); (ii) to co-ordinate with relevant Ministries and authorities to submit to the Prime Minister strategies, vision to develop the financial market; to make recommendation to government agencies on supervision mechanism, implementation of international practices and standards on financial market supervision; (iii) to analyze, forecast, give warnings about the safety of the banking and financial system and the risks to the national financial market; to develop the database system, collect, analyze, process and submit information regarding the national financial market to the Prime Minister; (iv) to make recommendations to sectoral inspection and supervision agencies and relevant authorities to handle violation of organizations, individuals not to fully follow regulations in banking, insurance, stock operation...

The functions and mandates on monetary and banking supervision of SBV and the National Financial Supervisory Agency are clearly separated. The main function of the National Financial Supervisory Agency is to supervise the market at macro level. But these two agencies always work closely and well co-ordinate to enhance the effectiveness of the financial inspection and supervision activities.

- The National Financial Supervisory Agency's mandates include: co-ordinate closely with Ministry of Finance, SBV, relevant ministries, authorities, agencies in providing advices to the Prime Minister on issues regarding management, inspection, supervision of banking, securities, insurance and national financial market activities; provide the Prime Minister and relevant authorities information, prepare periodical reports, analyzed report and forecast.
- Ministry of Finance, relevant ministries and authorities, and institutions conducting banking, securities, and insurance operation have the mandates to adequately and promptly provide periodical documents, information, and statistic data to the National Financial Supervisory Agency or at the request.

PART II: REGARDING THE GOVERNMENT REPORT (WT/TPR/G/287)**2. ECONOMIC DEVELOPMENTS AND TRADE POLICIES****2.1 Economic Developments****Page 8 (Para. 2)**

Evidence shows that in the period 2007–2011, export growth has been mainly driven by external demand and trade expansion, trade liberalization, as well as improved competitiveness. In terms of geographical destinations, overall, export markets have not been diversified, as major exports markets remained Viet Nam's traditional markets (ASEAN, US, EU, Japan), although exports are increasingly concentrated on newly opened markets (China and Republic of Korea) as a result of regional FTAs. Imports have expanded rapidly immediately after WTO accession, albeit slowing down recently due to domestic economic hardship and slower investment inflows.

Question(s):

12. While we appreciate Viet Nam's trade statistics being published periodically on the website of the General Department of Customs, Ministry of Finance, in the interests of providing full, transparent and accurate trade statistics, as well as for easier comparison purposes and trade facilitation, could we ask the government of Viet Nam to consider publishing its statistics on goods according to the HS Code classifications, detailed to the last digit?

ANSWER: At present, the Department of IT and Statistics, the General Department of Viet Nam Customs is drafting a Project on "Developing an information system to support in decision making on customs issues", in which the information or data of the goods code (HS 6 digits) can be publicized on the website of Customs. This project tentatively will be conducted in 2014-2015 and its outputs will be widely used.

2.2 Economic and Trade Policies**2.2.3 Trade Policy Developments since WTO Accession****2.2.3.3 Recent Trade and Trade and Trade Related Policy Developments****2.2.3.3.3 Energy, in Particular Electric Power Sector****Page 19 (Para. 2.63)**

To promote the use of environmentally friendly energy resources in power generation, the Government is encouraging the development of renewable electric power plants. On 29 Jun 2011, the government promulgated the Decision No.37/2011/QD-TTg which has set up an incentive mechanism for wind energy project developments that obliges distributors to buy electric power generated from wind energy and introduces feed-in tariffs for grid-connected wind power projects.

Question(s):

13. According to our understanding, government decision No. 37/2011/QD-TTg, Article 11 stipulates that the state-run Viet Nam Electricity Corporation and its affiliated units have the responsibility to buy electricity produced from grid-linked wind power plants.

ANSWER: Pursuant to Art. 11 of the Decision No.37/2011/QD-TTg, the Vietnam Electricity Corporation or its authorized - affiliated units have responsibility for buy whole electric produced from grid-linked wind power plant belong to the area managed by itself.

14. Could the Viet Nam government please describe the requirements that apply for a wind power plant to connect to the national grid?

ANSWER: Pursuant to Art. 7 of the Decision No.37/2011/QD-TTg, Connection Wind power projects into national electricity grid must suitable with planning of approved power development. The connection point is agreed by electricity seller and electricity purchaser on the principle that the electricity seller has responsibility for investment on transmission line to the connection point into national electricity grid which be exist and nearest in the planning of provincial electricity development. If The connection point is belong to planning of new electricity

grid investment has not yet performed, the electricity seller must agree with the electricity purchaser in order to synchronous in progress of Wind power projects investment and planning of electricity grid development investment. If cannot agree for the connection point, the electricity seller has responsibility for submitting to The Ministry of Industry and Trade to consider and decide. Investment owner of wind power project has responsibility for investment, operation, maintain lines and step-up transformer stations (if any) from electric plant of seller to the connection point such as connection agreement with the electricity purchaser. Depend on level of connected transformer, power distributing unit or power transmit unit have responsibility for investment on transmission lines from the connection point into national electricity grid under the approved planning of power development and sign connection agreement with investment owners of wind power projects.

15. Besides connecting to the national grid, are there any other requirements that wind power plants have to comply with in order for the Viet Nam Electricity Corporation to purchase their electricity?

ANSWER: Besides connecting to the national grid, pursuant to Art. 6 of the Decision No.37/2011/QD-TTg, Investment for construction of Wind power projects must suitable with planning of wind power development and planning of electricity development at government levels which have been approved by competent agencies. For Wind power projects which have not yet had in the list of approved planning of national wind power development and approved planning of national electricity development, investment owner has responsibility of making dossier to suggest on supplementing planning, send to the Ministry of Industry and Trade to evaluate, submit to The Prime Minister for consideration and decision. Investment of construction of wind power projects is executed according to provision of law on management of investment for work construction. Pursuant to Art. 11 of the Decision No.37/2011/QD-TTg, electric trade is performed through electric trade contract made as the sample electric trade contract applying for grid-linked wind power project promulgated by the Ministry of Trade and Industry.

16. Are foreign investors allowed to construct wind power plants in Viet Nam?

ANSWER: Investment of construction of wind power projects is executed according to provision of law on management of investment for work construction. Investment owner has only permitted to begin to build wind power work when had investment certificate; had electricity trade contract signed with electricity buyer; had agreement on power connection with power distributing unit or power transmit unit and had data report of wind measure in the continuous period fewest is 12 months.

17. Does the government allow wind power plants owned by foreign investors to connect to the national grid, and if so, what are the requirements that apply for such power plants to obtain connection?

ANSWER: Investor can mobilize capital under forms allowed by laws, from organizations, individuals are indigenous or foreign to invest executing wind power project. Investment of construction of wind power projects is executed according to provision of law on management of investment for work construction. Investment owner has only permitted to begin to build wind power work when had investment certificate; had electricity trade contract signed with electricity buyer; had agreement on power connection with power distributing unit or power transmit unit and had data report of wind measure in the continuous period fewest is 12 months.

PART III: OTHER QUESTIONS

Page 141 (Para 4.146) (WT/TPR/S/287)

VTV's film production company, the Viet Nam Television Film Center (VFC), makes television movies and mini-series; it seems that only about 30% of its entertainment programming is made locally and the rest is imported and dubbed in Vietnamese.

Question(s):

Popular music is an essential part of many video works, and in the process of developing the cultural creative industry, cross-sectoral cooperation is an inevitable trend. In order to assess the future possibility of cooperation between our popular music industry and Viet Nam's film industry, it would be appreciated if Viet Nam could please provide answers to the following:

18. What is the current status of development and production values in Viet Nam's popular music industry?

ANSWER: In Viet Nam's commitments in the WTO concerning audio visual services, Viet Nam excludes production and showing films in cinemas and introducing video tapes. Therefore, Viet Nam is not obliged to open the market for these services. However, Viet Nam can provide information as follows:

- Viet Nam's music industry is diversified. It has a long standing development history and Viet Nam's own cultural values.
- In recent years, following the policy to integrate in the world music market, music in the world has been to Viet Nam in different forms and ways. The types of music which came to Viet Nam most successfully is mainly based on bilateral agreements between the Vietnamese government and other governments.

19. What are the applicable laws, regulations, and tax requirements for recording companies or music agency companies seeking to invest (as wholly-owned foreign-run enterprises or as joint ventures) in Viet Nam?

ANSWER: Foreign-invested recording and music companies have been set up and operated under the Law on Investment and Vietnamese commitments in the WTO. According to these commitments, Viet Nam has not opened the market for commercial presence in the recording industry.

20. What are the applicable laws, regulations and tax requirements in Viet Nam pertaining to the organization of concerts?

ANSWER: According to Viet Nam's commitments in the WTO, foreign investors in entertainment services such as theatres, circus and music bands are allowed to establish joint ventures with Viet Nam counterparts not exceeding 49% of total capital following the year of WTO membership. Currently, joint ventures in these services are operating under the Law on Investment and related laws such as the Law on Corporate Income Tax and the Law on Added Value Tax similarly to Vietnamese counterparts. Viet Nam is drafting a law in this field.

21. What would be the best way of contacting leading organizations in Viet Nam's popular music sector?

ANSWER: Investors can contact with the Center for organizing performances which is part of the Bureau for Performances (Address: 32 Nguyen Thai Hoc, Ba Dinh Dist., Ha Noi. Tel: 0084.38455348. Web: www.cucnghethuatbieudien.gov.vn).

22. To what degree is Chinese-language popular music welcomed in Viet Nam?

Viet Nam has the policy to absorb positive culture values of the world. However, receiving cultural values or pop music depends on audience's taste and on articles concerning cultural corporation development stated in bilateral agreements between Viet Nam and other countries.

QUESTIONS FROM COLOMBIA

SECRETARIAT'S REPORT

2.3 Acuerdos y arreglos comerciales

2.3.1 OMC

"El párrafo 2.17 del Informe de la Secretaría indica que... "Desde su ingreso en la OMC (y hasta el final de mayo de 2013), Viet Nam ha presentado 130 notificaciones respecto de sus obligaciones en el marco de la OMC; la mayoría de las comunicaciones se refiere a MSF (47) y OTC (35). Hay lagunas notables en lo que respecta a las subvenciones a la agricultura y la industria, sobre las que Viet Nam, de conformidad con las obligaciones que ha asumido en virtud del Acuerdo sobre la Agricultura y el artículo 25 del Acuerdo sobre Subvenciones y Medidas Compensatorias, aún tiene que presentar datos relativos a las ayudas concedidas desde 2007..."

Con base en los párrafos anteriores, el Gobierno de Colombia expresa su preocupación ante el hecho de que Viet Nam no haya notificado a la OMC las subvenciones a la agricultura y a la industria desde 2007. Por lo tanto, solicita al Gobierno de ese país una explicación sobre:

1. *¿Cuáles han sido las razones para dicho incumplimiento?*
2. *¿El Gobierno de Viet Nam tiene prevista una fecha para notificar sus subvenciones a la agricultura y a la industria en los últimos cinco años?*

ANSWER: Due to capacity constraint, Viet Nam hasn't been able to provide the notification on the latest subsidy programs. After submitting the Notification on Subsidy programs applied in 2005-2007, Viet Nam has been drafting the Notification on Subsidy Programs (in both agriculture and industry) applied in the period post 2007 and Notification on State Trading Enterprises, and will try to submit these notifications at the soonest time.

3. POLÍTICAS Y PRÁCTICAS COMERCIALES, POR MEDIDAS

3.1 Introducción

En el párrafo 3.6 del Informe de la Secretaría señala que... "Desde 2011 se viene aplicando un programa de operadores económicos autorizados. En total, a finales de marzo de 2013, el Departamento General de Aduanas de Viet Nam había acreditado a 14 empresas como operadores económicos autorizados. Entre otras iniciativas, la administración de aduanas tiene previsto introducir un sistema automático de despacho de carga y una base de datos de aduanas inteligente en 2014. Viet Nam espera que para 2020 se pueda proceder al despacho electrónico en todas las oficinas de aduanas. Por lo tanto, la frecuencia de las inspecciones físicas de la carga debería disminuir desde su nivel actual del 15%-20% hasta menos del 7% para 2020."

3. *¿Podrían compartir su experiencia en la implementación de esta figura?*
4. *¿Han evaluado la posibilidad de dar reconocimiento a los programas de operadores autorizados de otros países?, si es así, ¿Cuáles serían las medidas a considerar?*

ANSWER: Viet Nam proposed several solutions:

- Legislating AOE rules.
- Strictly following standard framework SAFE – WCO.
- Providing proper AOE criteria compatible with other countries.
- Building and strengthening the partnership Custom – Corporation, encouraging voluntary commitment.

3.4. Medidas que afectan a la producción y al comercio

3.4.4 Zonas francas y zonas económicas especiales

Los párrafos 3.122 y 3.124 del Informe de la Secretaría señalan que... "Viet Nam invita a los inversores, tanto nacionales como extranjeros, a realizar inversiones en las infraestructuras y el desarrollo operativo de las zonas. El Gobierno apoya el desarrollo de infraestructuras para promover las inversiones en la producción industrial en zonas "desfavorecidas" de Viet Nam. La mayoría de los incentivos fiscales otorgados inicialmente a las empresas establecidas en zonas industriales y zonas de elaboración para la exportación expiraron en el período de 2001-2005. La facilitación de los procedimientos de inversión, el alquiler de tierras e instalaciones, la capacitación de la mano de obra y el suministro de agua, electricidad y otros servicios constituyen las principales ventajas otorgadas actualmente."..

"Aunque Viet Nam sigue inaugurando polígonos industriales y zonas económicas, está prevista la creación de otros más. Las infraestructuras existentes se hallan, con frecuencia, infrautilizadas. Como promedio, la tasa de ocupación de los polígonos industriales en funcionamiento descendió del 74% en 2007 al 65% en 2010. Casi 50 polígonos industriales carecen de ocupantes. Además, los resultados son muy desiguales en las distintas regiones. En 2010, menos de la mitad de los polígonos industriales generaron aproximadamente el 84% del volumen total de exportaciones de esos polígonos. "

Con respecto a estos dos párrafos, podría el Gobierno de Viet Nam responder las siguientes inquietudes:

5. *Se menciona que en las zonas industriales y en las zonas de elaboración para la exportación no se otorgan incentivos fiscales desde 2005. Sin embargo, en el párrafo 4.98 se afirma que la ayuda interna a las actividades manufacturadas se presta en forma de incentivos fiscales y no fiscales de los cuales pueden beneficiarse empresas que desempeñan su actividad en zonas industriales, zonas de alta tecnología y zonas de elaboración para la exportación. Entonces, ¿Se otorgan o no se otorgan incentivos fiscales en las mencionadas zonas? ¿Se otorgan incentivos tributarios en las mencionadas zonas? En caso afirmativo, ¿Cuáles son sus montos y modalidades?*
6. *¿Cuál es la diferencia en cuanto a estructura e incentivos tributarios y fiscales de los POLÍGONOS industriales, frente a las zonas industriales, las zonas de elaboración para la exportación y las zonas económicas?*
7. *¿El gobierno de Viet Nam está diseñando alguna política de atracción de inversionistas para ocupar los polígonos industriales que carecen de ocupantes, y/o elevar la tasa de ocupación en aquellos que tienen tasas reducidas de ocupación? En caso afirmativo, ¿En qué consiste dicha política?*

ANSWER: All industrial and export processing zone subsidies that fell within the meaning of Article 3 of the WTO Agreement on Subsidies and Countervailing Measures (ASCM) had been eliminated on or before the date of accession, and that such subsidies are not reintroduced. Moreover, no new subsidies inconsistent with Article 3.1(a) or (b) of the ASCM are introduced after accession.

In addition, Viet Nam affirms its full compliance with its accession commitments on subsidies and regulations of the Agreement on Subsidies and Countervailing Measures.

QUESTIONS FROM THE DOMINICAN REPUBLIC

RESUMEN

Entorno Económico

En el párrafo 1, página 9, se menciona que "sigue habiendo algunas diferencias que pueden dar lugar a diferentes interpretaciones, en particular cuando un inversor extranjero adquiere una empresa hasta entonces de propiedad vietnamita. El establecimiento de un sistema de ventanilla única para el registro de empresas y la obtención de licencia para invertir es una cuestión que lleva pendiente mucho tiempo y que podría ayudar a resolver ocasionales alegaciones de aplicación incoherente y descoordinada de leyes y reglamentos por los organismos gubernamentales responsables."

1. ¿Cuáles instrumentos están siendo considerados por parte de las autoridades para eliminar las incongruencias en los requisitos aplicables a las empresas vietnamitas adquiridas por un inversionista extranjero?
2. ¿Qué acciones está realizando Viet Nam para impulsar el desarrollo de un sistema de ventanilla única, y por ende disminuir la aplicación incoherente y descoordinada de regulaciones gubernamentales?

ANSWER: Investment procedure reform is one of the key solutions that the Government of Viet Nam is focusing on. At present, investment licensing authority is fully decentralised to provincial People's committees and Management Boards of industrial and export processing zones. A one-stop shop system has already been established in these above-mentioned government authorities to facilitate the process of implementing foreign investment procedures.

Moreover, the Government has instructed relevant ministries and line ministries to take overall review of the legal system, especially regulations on business and investment procedures so as to ensure and improve the consolidation and feasibility of legal framework, and facilitate the consistent application among ministries, line ministries and local authorities.

Evolución de la política comercial

En el párrafo 6, página 11, se indica que "Cuestiones tales como las mercancías falsificadas y piratas y el robo de señales de cable y de satélite siguen siendo motivo de preocupación."

3. ¿Qué disposiciones ha encaminando el gobierno de Viet Nam para contrarrestar la falsificación y la piratería para dar cumplimiento a las disposiciones del Acuerdo de Propiedad Intelectual (ADPIC) y de la Organización Mundial de Aduanas?

ANSWER: Viet Nam has regulations on copyrights and as well programs to combat signal theft in the supply of satellite television and cable television services. The evaluation of the unauthorized signal reception is so inconsistent. So far, Viet Nam has not received any complaints about this issue.

Reforma fiscal

En el párrafo 4, página 24, se señala que, "En la estructura del impuesto sobre la renta de 2009 se aplicaba el mismo tipo del impuesto sobre la renta de las sociedades (25%) respecto a los trabajadores vietnamitas y extranjeros, aunque siguen manteniéndose ciertos tipos preferenciales de ese impuesto en forma de incentivos fiscales".

4. ¿Podría Viet Nam abundar sobre los tipos preferenciales de ese impuesto que aún se mantienen? ¿Es compatible con las disposiciones de la OMC?

ANSWER: Current tax rate of the personal income tax is from 5% to 35%, averaged rate is about 22.5% after reduction based on family circumstances.

Current tax rate of the corporate income tax is 25%. From 01 January 2014, the corporate income tax shall be 22% (pursuant to the Law on amending and supplementing a number of articles of Corporate Income Tax Law, adopted by Vietnamese National Assembly on 19/6/2013).

Therefore, unification of tax rates between natural person and legal entity according to the Tax Reform Strategy 2011-2020 is ensured. This content does not violate WTO regulations.

Privatización

En el párrafo 3, página 25, se comenta que "algunas empresas estatales, al parecer aprovechando la escasa supervisión y transparencia, han ampliado sus operaciones a sectores que exceden de su competencia primordial (secciones 3.4.8, 4.4.1, 4.4.2, 4.6.4, 4.6.5 y 4.6.6)."

5. ¿Qué estrategia está considerando Viet Nam para limitar el aprovechamiento de las empresas estatales en este sentido?

ANSWER: Unclear question.

2. RÉGIMEN DE POLÍTICA COMERCIAL: MARCO Y OBJETIVOS

Acuerdos y arreglos comerciales

En el párrafo 4, página 38, dice que "Hay lagunas notables en lo que respecta a las subvenciones a la agricultura y la industria, sobre las que Vietnam, de conformidad con las obligaciones que ha asumido en virtud del Acuerdo sobre la Agricultura y el artículo 25 del Acuerdo sobre Subvenciones y Medidas Compensatorias, aún tiene que presentar datos relativos a las ayudas concedidas desde 2007. Además, pese a la importancia del sector público en su economía, Viet Nam no ha presentado información actualizada o notificaciones sobre el comercio de Estado."

6. ¿Podría Viet Nam explicar las dificultades que le ha impedido proporcionar la información exigida por los Acuerdos antes mencionados?

7. ¿Qué medidas se están contemplando para corregir y sobrepasar dichas dificultades?

ANSWER: Viet Nam affirms its full compliance with notification obligation of the WTO. However, due to capacity constraint, Viet Nam has not notified all the measures affecting trade as required by WTO Agreements. Viet Nam is now drafting a number of notifications on subsidy for the post 2007 period, state trading etc. and shall notify them to the WTO at the soonest time.

4. POLÍTICAS COMERCIALES, POR SECTORES

Panorama General

En el párrafo 2, página 109, se explica que "Las actividades manufactureras se benefician de ayuda interna en forma de incentivos fiscales y no fiscales, así como prácticas de contratación pública, y mediante una campaña para fomentar la compra local con el lema "los vietnamitas utilizan productos vietnamitas". Además de la protección en frontera, se ha adoptado un sistema de ayuda específica a la industria para impulsar las "industrias de apoyo", elemento importante para aumentar el contenido nacional en algunos sectores básicos (por ejemplo textiles y prendas de vestir, vehículos de motor) y en la industria del acero, y se ha estado estudiando la posibilidad de prestar asistencia al sector del automóvil."

8. ¿Estos incentivos son compatibles con el Acuerdo sobre Subvenciones y Medidas Compensatorias de la OMC?

ANSWER: Viet Nam Development Strategy for Garment textile to 2015, orientation to 2020 and Development Plan of Garment textile to 2015, orientation to 2020 states some incentives as follows:

a. Encouraging all foreign and domestic economic factors investing on garment textile to meet export and domestic demands.

- b. Planning investment projects on textile, dyeing, producing cotton and synthetic fiber, garment materials to attract investors.
- c. Building industrial zones specialized in garment and textile with full capability of electricity, water purification as well as satisfying environmental requirements and having educated labor.
- d. Developing administrative procedures in export and investment by cooperation between agencies to better and simplify existing procedures, and requiring agencies to complete in a specific time scope.

Viet Nam has already implemented policies on developing supporting industries, including several garment products and wanted gradually to be able to create garment materials to avoid too dependent on the imported.

En el párrafo 3 de la página 109, se menciona que "Determinadas actividades, como las relativas a las telecomunicaciones, los servicios de aviación y los ferrocarriles, están sujetas a topes en la propiedad extranjera. Es significativa en algunos casos la participación del Estado en subsectores importantes de los servicios (por ejemplo la banca, las telecomunicaciones y el transporte) con una concentración elevada del mercado"... "Mientras que recientemente se han aprobado contingentes de proyección de películas extranjeras en los cines, se han suprimido algunas condiciones restrictivas a que estaban sujetas las importaciones de películas. Las deficiencias de la infraestructura de transporte y las tarifas y los recargos cada vez más elevados de las empresas extranjeras que dominan el mercado del transporte marítimo internacional han afectado al parecer a la competitividad de las exportaciones; se ha restringido temporalmente la presencia de buques extranjeros que operan en el mercado interno del transporte marítimo de contenedores."... "A pesar de la apertura de Viet Nam a las empresas de propiedad totalmente extranjera, es obligatoria una prueba de necesidades económicas para el establecimiento de cualquier punto de venta al por menor después del primero."

9. ¿Qué medidas podría adoptar Viet Nam para la eliminación de los topes aplicados a la propiedad extranjera en ciertos sectores? ¿Se encuentra esta regulación conforme con el principio de Trato Nacional de la OMC?

ANSWER: Upon WTO accession, Viet Nam made a very liberalized commitments in many key services sectors such as distribution, financial, transportation etc. With regards to sectors and sub-sectors where many WTO members still maintain restrictions like audio-visual, telecommunication, Viet Nam has allowed foreign service suppliers to establish joint-ventures with foreign majority ownership. Until now, Viet Nam has fully and seriously implemented its WTO commitments.

10. ¿Bajo qué razonamiento se asignaron contingentes de proyección de películas extranjeras? ¿Por cuales motivos se discrimina la cinematografía extranjeras en relación a las nacionales?

ANSWER: The Law on Cinematography does not impose quotas on foreign films imported to Vietnam. The implementation of this Law is in accordance with WTO regulations. Businesses do not face with difficulties concerning implementation if they comply with Article 11 of the Law on Cinematography issued on 29 June 2006 and if their films are approved by the Film Committee. This approval is part of Vietnam's commitments in the WTO.

Decree No. 54/2010/ND-CP guiding the implementation of the Law on Cinematography requires the ratio of local and foreign films. This ratio is to preserve Vietnam's culture. This is not contrary to Vietnam's commitments in the WTO because:

- Audio and visual services are included in the List of MFN exemptions under Article II. 'Showing TV programs and works of cinema and producing and broadcasting audio visual works to the public' is included in this list.

Regulations on the film ratio in Viet Nam are applied in a non-discriminatory manner between cinemas of domestic and foreign-invested enterprises. Therefore, in principle, the non-discrimination principle is not violated.

11. ¿Cuáles factores se tomaron en cuenta para aplicar una restricción temporal de buques extranjeros en el mercado interno? ¿Qué duración considera Viet Nam tendrá dicha limitación?

ANSWER: All countries don't open their markets for the inland transportation services. Viet Nam does not open either. We only permit foreign vessels to undertake the inland transportation for the intermediate transfer of exports and imports in Viet Nam.

ADDITIONAL QUESTIONS FROM THE DOMINICAN REPUBLIC

1. El Párrafo 22 del Resumen General, indica que el crecimiento sostenible de Viet Nam depende de la implementación oportuna de reformas estructurales orientadas a solucionar los riesgos sistemáticos que enfrenta el sector financiero, lo cual podría lograrse *Inter alia* intensificando la reestructuración de Empresas de Propiedad del Estado. Sin embargo, la tendencia de privatización de Empresas Estatales fue revertida en el período 2009-2011, incorporándose un total de ciento veintiocho (128) nuevas empresas de este tipo sólo en el año 2009, *En este sentido, ¿Podría Viet Nam aportar mayor información sobre las políticas, estrategias y metas específicas para la privatización y/o reorganización de Empresas de Propiedad del Estado, en el marco del Plan Maestro de Reestructuración de Empresas Estatales del 2012? En adición, ¿Podría Viet Nam suministrar una lista de las Empresas de Propiedad del Estado clasificadas por tipo de actividad productiva, e indicar si existe alguna prioridad de reestructuración en actividades productivas específicas?*

ANSWER: According to Prime Minister's Decision No.929/QD-TTg dated 17 July 2012 on Plan to restructure SOEs during 2011-15, 100% state ownership is maintained only in enterprises in areas of state monopoly, national defense and security; publication; agricultural irrigation; transport safety; lottery; electricity production and distribution at massive scale and multi purposes and having significant socio-economic impact attached with national defense and security; management and operation of national and urban railway infrastructure; airport and seaport Class I; money printing and moulding. Enterprises in other areas shall not have 100% state ownership.

2. En el Párrafo 29 del Resumen General, se hace mención de que, en algunos casos, la participación del Estado puede ser alta en importantes subsectores de servicio. *¿Podrían delimitar esos casos?*

ANSWER: The phrase "state involvement" does not reflect correctly the current situation in Viet Nam. In reality, Viet Nam has not allowed foreign service suppliers to provide a number of sensitive services such as publication, distribution of oil and petrol, pharmaceuticals etc.

3. El Párrafo 3.70 establece que el Banco de Desarrollo de Vietnam, (VDB, por sus siglas en inglés) suministra créditos a la exportación, créditos de garantía a la inversión, así como garantías sobre el desempeño de proyectos de exportación. También, se enfatiza que en el año 2010, las tasas de interés en los créditos a las exportaciones ascendió a un total de \$65 billones. *¿Podría Viet Nam explicar los procedimientos, términos/condiciones generales contractuales y criterios utilizados para conceder estos créditos y garantías? ¿Existen prioridades sectoriales para la concesión de créditos a la exportación? Si existen, ¿Cuáles son estos sectores?*

ANSWER: Government decree 75/2011/ND-CP on export credit and investment credit is the legal document directly regulate export credit.

Contractual conditions are:

- Trader must be under the coverage of scope of application of this Decree (being an exporter or a foreign importer).
- Trader must have an export or import contract.
- Trader must have a solid business plan and this plan must be examined by VDB.
- Trader must have a clean judicial record.

- Beside, exporter is required to buy insurance for any asset formed from export credit; foreign importer is required to have a foreign Government or credit institutions guarantee.
- The exporter must maintain transparent accounting documents and the documents must be independently audited.

The main terms of the export credit are:

- The credit will not exceed 85% of total value of the contract.
- Period of loan will not exceed 12 months.
- Interest rate is determined by CEO of VDB and must be announced by Ministry of Finance base on market interest rate.
- Currency of the loan is VND.

The areas covered by Decree 75 are in the list of Annex II attached to the Decree.

4. En el Párrafo 4.101 del Informe de la Secretaria, se hace referencia al Plan Maestro para el Sector Textil del 2008, en el cual se manifiesta el deseo de Viet Nam de invertir en instalaciones de producción de fibras de algodón y tejidos de alta calidad, con el propósito de motivar la reducción de las importaciones de estos insumos, e incrementar el contenido de componentes locales en las prendas de vestir, de un 32% en 2006, a un 70% en el año 2020. ¿Podría el Gobierno de Viet Nam especificar qué tipo de políticas públicas, contribución o inversión se realizarán para lograr dicho aumento del contenido de insumos textiles locales en las de prendas de vestir manufacturadas en Vietnam?

ANSWER: Viet Nam's goal is increasing localization ratio in Garment products. Viet Nam Development Strategy for Garment textile to 2015, orientation to 2020 and Development Plan of Garment textile to 2015, orientation to 2020 states:

- a. Encouraging all foreign and domestic economic factors invest on garment textile to meet export and domestic demands.
- b. Planning investment projects on textile, dying, producing cotton and synthetic fiber, garment materials to attract investors.
- c. Building industrial zones specialized in garment with full capability of producing electricity, water purification as well as satisfying environmental requirements and having educated labor.
- d. Developing administrative procedures in export and investment by cooperation between agencies to better and simplify existing procedures, and requiring agencies to complete in a specific time scope.

Viet Nam has already implemented policies on developing supporting industries, including several garment products and wanted gradually to be able to create garment materials to avoid too dependent on the imported.

5. El Párrafo 4.112, indica que para fines de registro de nuevos productos farmacéuticos, las empresas de inversión extranjeras deben realizar nuevos ensayos clínicos, en caso de que los mismos hayan estado vigentes en su país de origen por un período menor de cinco años. *¿Cuáles son los requisitos para el registro de productos y de conducción de ensayos clínicos aplicables a las empresas de inversión doméstica en esta industria? ¿Existe en Viet Nam algún procedimiento para validar acreditaciones y/o ensayos clínicos internacionales de productos farmacéuticos?*

ANSWER: For domestic medicines, including medicines made by FDI enterprises in Vietnam, clinical trial is required for both research and manufacturing, in accordance with current

regulations. If clinical trials for such medicines have been done abroad, then the examination and evaluation of their clinical dossiers is equivalent with such of imported medicines.

6. En el Párrafo 1.15 del Informe de la Secretaria, se hace referencia a que en el 2013 se aprobaron nuevos incentivos fiscales para las empresas. *¿Podrían detallar cuáles son estos nuevos incentivos?*

ANSWER: According to the Resolution 02/NQ-CP dated 07/01/2013 of the Government regarding solutions to overcome difficulties for businesses, support market, resolve Non-performing Loan: corporate income tax payable was deferred by: 6 months for the amount originally due by the first quarter 2013; and by 3 months for the amount originally due by the second quarter and the third quarter. VAT payable deferral was for 6 months for amount originally due in January, February and March 2013. Eligible entities included small and medium enterprises, labor-intensive enterprises in some sectors and enterprises operating in housing business.

7. En el Párrafo 1.6 del Informe de la Secretaria, se hace referencia a un número de medidas implementadas para atraer Inversión Extranjera Directa. *¿Podrían, por favor, enlistar cuáles fueron estas medidas?*

ANSWER: To improve investment environment and attract FDI, the Government has promulgated Resolution No. 103/NQ-CP dated 29th August, 2013 on the direction of enhancing efficiency in FDI attraction, use and management in the coming time.

Resolution No. 103/NQ-CP has identified the key viewpoints as follows:

- Foreign-invested economy is part of Viet Nam's economy, which is encouraged for sustainable development, guaranteed of legitimate rights and interests and fair treatment on the basis of mutual beneficial cooperation and compliance with international commitments that Viet Nam is a party.
- FDI plays as a key source of economic power, which is combined with domestic resources to create consolidated strength to realise the target of industrialisation and modernisation and economic restructuring.
- Amendment of foreign investment regulations must gradually improve competitiveness in the way of being more favourable and preferential.

Basing on the above-mentioned viewpoints, Resolution No. 103/NQ-CP has indicated the following solutions:

- Perfecting the investment-related legal system in the consistent, public, transparent and predictable manner to be more investor-favourable and regionally competitive.
- Considering amendment of the Law on Enterprise to continue improving investment environment, building favourable and transparent legal framework for establishment, operation and closure of enterprises of all economic sectors.
- Overallly reviewing the legal system, with the primary focus on investment and business related laws, such as Land Law, Construction Law, Law on Environment Protection, Law on High Technologies, Law on Technology Transfer, Law on Real Estate Trading, to assure the uniform with regulations of the Law on Investment.
- Amending and promulgating new policies to encourage domestic and foreign investments in the infrastructure sector.
- Strengthening mechanisms and policies to attract FDI into supporting industries and high-tech sectors.
- Continuing the process of simplifying investment administrative procedures.

8. En el Párrafo 3.11 del Informe de la Secretaria, se hace referencia a algunas restricciones existentes para la importación de ciertos productos tales como cigarros, cigarrillos, productos derivados del petróleo, y periódicos, que solamente pueden ser importados por empresas designadas. *La República Dominicana desea conocer cuáles son los procedimientos y requisitos para recibir dicha designación.*

ANSWER: According to Viet Nam's WTO commitments, (section 6, Table 5, page 26, Viet Nam's WTO Accession Working Party report), the Viet Nam Tobacco Corporation (Vinataba) is appointed to be the exclusive importer of cigarettes and cigars (HS code 2402, 2403).

The appointment of Vinataba as the exclusive importer of cigarettes, cigars has been legalized in the inter-ministerial Circular No. 01/2007/TTLT-BTM-BCN dated 10 January 2007 by Ministry of Trade and Ministry of Industry (now being Ministry of Industry and Trade) providing guidance on the import of cigarettes, cigars.

9. En el párrafo 3.122 del Informe de la Secretaria, mencionan que los incentivos fiscales otorgados a empresas de zona franca entre el 2001 hasta el 2005 expiraron en su mayoría. *¿Las autoridades de Viet Nam podrían ofrecer una lista detallada de los incentivos fiscales aún permanecen vigentes?*

ANSWER: Viet Nam has fully complied with its commitments under the Agreement on Subsidies and Countervailing Measures since its accession to the WTO. Viet Nam does not maintain any measure inconsistent with its WTO commitments.

According to Viet Nam's current regulations, for domestic medicines, including medicines made by FDI enterprises in Vietnam, clinical trial is required for both research and manufacturing. If clinical trials for such medicines have been conducted abroad, the examination and evaluation of their clinical dossiers is equivalent with such of imported medicines.

QUESTIONS FROM ECUADOR

Reporte de la Secretaría: WT/TPR/S/287

1. Párrafo 1.1, ¿Podría Vietnam explicarnos cómo el paquete de estímulos económicos en el año 2009, que podría interpretarse como desembolsos fiscales, cumple con sus compromisos en materia de subvenciones a la exportación?

ANSWER: In May 2009, the Government officially announced stimulus package worth 145.6 trillion VND (\$8 billion USD or 8.3% GDP) in order to enhance growth in the scenario of deeper global economic recession. The stimulus package in 2009 was not used to provide export subsidies and it was divided into the following components: Supporting credit loans with low interest rates (17 trillion VND); deferring settlements of advance construction capital in work-in-progress before 2009 (3.4 trillion VND), advancing funds to carry out some urgent projects likely to be completed in 2009-2010 (37.2 trillion VND); transferring planned capital investment from 2008 to 2009 (30.2 trillion VND); issuing more Government bonds (20 trillion VND); implementing tax exemption policy (28 trillion VND), other stimulus spending to prevent economic recession, ensuring social security (9.8 trillion VND).

2. Párrafo 1.15, ¿Podría Vietnam explicarnos en qué consiste la Ley del Impuesto sobre la Renta de las Personas Físicas? Cuáles han sido los logros obtenidos de las varias reformas fiscales emprendidas por Vietnam con los objetivos de crear un sistema fiscal "sincrónico", coherente, equitativo y eficaz?

ANSWER: The subject of personal income tax is taxpayers including residents who earn taxable incomes under the regulations inside and outside the Vietnamese territory and non-residents who earn taxable incomes under the regulations inside the Vietnamese territory.

In brief, the achievements of the tax reforms include: taxable income is clearly defined; tax calculation method has made simple and in accordance with international practice, improving the compliance of taxpayers; the collection of taxes has been substantially facilitated; the number of tax rates is now suitable for taxable income and taxpayers; and the tax rates have been made reasonable to regulate income and encourage people to create wealth.

3. Párrafo 2.16. ¿Cuáles son los productos reservados al "comercio de Estado"?

ANSWER: Viet Nam had commitments on state trading enterprises, which are set out in Table 5, Working Party's Report on Viet Nam's Accession to the WTO. Since the WTO accession, Viet Nam hasn't maintained state-trading enterprises for any products beyond those listed in this Table.

4. Párrafo 2.17, ¿Podría Vietnam indicarnos respecto a las subvenciones a la agricultura y la industria, por qué aún no ha notificado ante la OMC los datos relativos a las ayudas concedidas desde el año 2007, así como la información actualizada sobre el comercio de Estado? Y ¿si el procedimiento de valoración en aduana continua siendo el mismo, o ha habido cambios en la legislación y reglamentación?

ANSWER: Due to human resource constraint and limited capacity in collecting and analyzing statistical data, Viet Nam hasn't provided the most updated notifications on subsidies and state trading enterprises. However, Viet Nam has been drafting these notifications and will submit to the WTO Secretariat as soon as possible. For further clarity, Viet Nam affirms that there have not been any changes to the list of committed products subject to state trading enterprises.

5. Párrafo 2.22. Página 42: ¿Qué contingentes arancelarios son los que van a ser eliminados?

ANSWER: Tariff rate quotas are applying to 04 items which are (i) birds' eggs, in shell, fresh, preserved or cooked, (ii) cane or beet sugar and chemically pure sucrose, in solid form, (iii) Unmanufactured tobacco; tobacco refuse and (iv) and salt (including table salt and denatured salt) and pure sodium chloride, whether or not in aqueous solution or containing added anti-caking or free flowing agents; sea water with the unlimited final quota. There is no provision on the time to cease quota application for these items.

6. Párrafo 2.37, ¿Podría Vietnam indicarnos la fecha de implementación del sistema de ventanilla única en su país para registro de empresas y licencias de inversión, como instrumento para facilitar el comercio con los demás países Miembros de la OMC?

ANSWER: The single window system has been introduced in Viet Nam since 2003 pursuant to Decision No. 181/2003/QĐ-TTg dated 04/9/2003 of the Prime Minister implementing single window system at local governmental administrative agencies. This Decision has been replaced by Decision No. 93/2007/QĐ-TTg dated 22/6/2007 by the Prime Minister implementing single window and inter-agency single window systems at local governmental administrative agencies.

7. Párrafo 3.1. ¿Cuáles han sido los impactos de las medidas adoptadas por Vietnam del Proyecto Nacional de Reforma Administrativa, también denominado "Proyecto 30"?

ANSWER: The desirable outcomes of the Project 30 are as follows:

1. Institutional reforms:
 - a) To build and perfect the legal system on the basis of the revised 1992 Constitution;
 - b) To renew and improve the quality of legislative work, first of all the process of formulating and promulgating laws, ordinances, decrees, decisions and circulars and legal documents of local administrations in order to ensure their constitutionality, legality, consistency, specificity and feasibility;
 - c) To continue to build and perfect the system of institutions, mechanisms and policies, first of all, institutions of the socialist-oriented market economy ensuring equality in the distribution of the fruits of the renewal and socio-economic development;
 - d) To perfect ownership institutions, clearly affirming the objective and permanent existence of different forms of ownership, first of all, state ownership, collective ownership and private ownership, to guarantee the rights and legitimate interests of different owners in the economy; to synchronously revise existing institutions on land ownership, clearly distinguish the rights to own and use land and guarantee the rights of land users;
 - e) To continue to renew institutions on state enterprises, focusing on clearly defining the administration role of the State as the owner of state property and capital; to separate the function of the owner of state property and capital from the function of business administration of state enterprises; to perfect institutions on organization and trading in state capital;
 - f) To amend and supplement laws on socialization toward clarifying the responsibility of the State for taking care of the people's material and spiritual lives; to encourage all economic sectors to provide services in a fair and healthy competitive environment;
 - g) To continue to build and perfect the system of institutions on the organization and operation of state administrative agencies; to amend, supplement and perfect legal documents on the organization and operation of the Government, People's Councils and People's Committees at all levels;
 - h) To build and perfect laws on the relationships between the State and the people, focusing on guaranteeing and promoting the people's mastery, collecting the people's opinions before deciding on important guidelines and policies, and on the people's right to oversee activities of state administrative agencies.
2. Reforms of administrative procedures:
 - a) To reduce, and improve the quality of administrative procedures in all fields of state administration, especially those related to citizens and enterprises;
 - b) During the 2011-2015 period, to reform administrative procedures in order to further improve the business environment, liberalize all social resources and increase national

competitiveness, ensuring conditions for fast and sustainable economic development. To concentrate efforts on the following fields: investment; land; construction; house ownership; tax; customs; import and export; health; education; labor; insurance; science and technology and some other fields decided by the Prime Minister in response to the reform requirements in each period;

c) To reform administrative procedures between state administrative agencies, sectors and levels and within each state administrative agency;

d) To closely control the issuance of new administrative procedures in accordance with law;

e) To make public and transparent all administrative procedures in practical and appropriate forms; to unify the methods of calculating costs borne by individuals and organizations when having administrative procedures settled at state administrative agencies; to maintain and update the national database on administrative procedures;

f) To set the requirement of reforming administrative procedures right in the process of building institutions, summarize practical experiences and increase dialogues between the State and enterprises and people; to expand democracy and promote the role of independent consultancy organizations and consultants in the building of institutions and elaboration of national standards of administrative procedures; to radically reduce existing administrative procedures; to publicize standards and administrative procedures for the people to oversee the implementation thereof;

g) To receive and process reports and petitions of citizens and organizations on administrative regulations in order to support the raising of the quality of administrative regulations and supervise the implementation of administrative procedures by state administrative agencies at all levels.

3. Reforms of the organization of the state administrative apparatus:

a) To comprehensively review the existing positions, functions, tasks, powers, organizational structures and payrolls of ministries, ministerial-level agencies, government-attached agencies and People's Committees at all levels, specialized agencies of provincial- and district-level People's Committees and other agencies and organizations of the state administrative apparatus at central and local levels (including state-run non-business units); on this basis to adjust functions, tasks, powers and re-organize and re-arrange agencies and units with a view to overcoming overlap, omission or repetition in their functions, tasks and powers; to transfer jobs which state administrative agencies should not perform or are performing ineffectively to the society, social organizations and non-governmental organizations;

b) To review and evaluate the organizational model and operational quality of local administrations so as to establish an appropriate model ensuring proper determination of their functions, tasks and powers to be practical, effective and efficient; to build appropriate models of municipal and rural administrations.

c) To perfect the mechanism of decentralization to ensure unified management of natural resources and minerals of the country; to plan and orient development; to increase supervision, examination and inspection; at the same time, to heighten the proactive role and sense of responsibility and raise capacity for each level and sector;

d) To continue to renew working styles of state administrative agencies; to uniformly implement and raise the quality of implementation of the one-stop-shop and interagency one-stop-shop mechanisms at the sections for receipt of dossiers and return of results under the offices of district-level People's Councils and People's Committees; to ensure satisfaction of citizens and organizations with services provided by state administrative agencies at over 80% by 2020;

e) To reform and widely implement the mechanism of autonomy and self-responsibility of public service non-business units; to incrementally raise the quality of public services, especially in

the education and health sectors; to ensure satisfaction of citizens with services provided by public service non-business units in the education and health sectors at over 80% by 2020.

4. To build, and raise the quality of, the contingent of cadres, civil servants and public employees:

a) By 2020, the contingent of cadres, civil servants and public employees will be quantitatively sufficient, rationally structured and professionally qualified and capable to perform public duties, serving the people and the cause of national development;

b) To build through appropriate and effective forms of training and re-training the contingent of cadres, civil servants and public employees with good ethical qualities, firm political stuff, high professional capability and professionalism, and devotedly serving the people;

c) To formulate, supplement and improve legal documents on titles and professional criteria for cadres, civil servants and public employees, including managers and leaders;

d) On the basis of clearly defining the functions and tasks of each agency or unit, to build appropriate structures of cadres, civil servants and public employees associated with working positions;

e) To perfect laws on recruitment, arrangement and task assignment suitable to qualifications, capabilities and strengths of recruited civil servants and public employees; to implement the regime of rank promotion exams according to the competition principle: to hold competitive exams to appoint persons to leading and managerial positions from department director or equivalent level (in central agencies) and provincial-level department director or equivalent level downward (in localities);

f) To perfect laws on performance-based evaluation of cadres, civil servants and public employees; to implement the mechanism of dismissal or relief from office of persons who fail to fulfill their duties, breach discipline and lose prestige to the people; to clearly define tasks and powers of cadres, civil servants and public employees corresponding to their responsibilities, and impose stringent penalties on cadres, civil servants and public employees who violate law and breach discipline and professional ethics;

g) To renew the contents of and programs on training and re-training cadres, civil servants and public employees; to conduct training and re-training in the following forms: instruction during apprenticeship period; training based on criteria for different ranks of civil servants and public employees; training and retraining based on criteria for leading and managerial positions; compulsory training in minimum knowledge and skills before appointment, and annual retraining;

h) To concentrate and prioritize resources for reforming salary policies and regimes of social insurance and preferential treatment of people with meritorious services; by 2020, salaries of cadres, civil servants and public employees will be substantially reformed to ensure their and their families' lives above the average level in the society.

To amend and supplement regulations on non-salary allowances based on professional ranks and grades and difficult, dangerous and hazardous working conditions.

To revise laws on rewarding and commendation of cadres, civil servants and public employees and grant of satisfactory monetary rewards for those with outstanding performance;

i) To increase the responsibility, administrative discipline and professional ethics of cadres, civil servants and public employees.

5. Reform of public finance:

a) To reasonably mobilize, distribute and effectively utilize all resources for socioeconomic development; to further perfect the tax policy and system and income, salary and wage policies; to positively balance the budget; ensure reasonable proportions of savings for development

investment; to reserve resources for humans, especially reforming salary and social security policies; to incrementally reduce budget deficit;

b) To further renew finance mechanisms and policies applicable to state enterprises, especially economic groups and corporations; to strictly manage the borrowing and repayment of overseas loans; to keep government debts, national debts and public debts within safety limits;

c) To fundamentally renew the mechanism of use of state funds and the mechanism of formulation and performance of scientific and technological tasks in the direction of regarding application objectives and benefits as primary standards; to shift science and technology non-business units to operate under the mechanism of autonomy and self-responsibility; to develop science and technology enterprises, technology renewal funds and venture investment funds; to synchronously formulate policies to train, attract, appoint to important positions and satisfactorily treat talented scientists and technologists;

d) To renew the mechanism of allocation of the state budget to state administrative agencies, eventually abolish the mechanism of budget allocation based on payrolls and replace it with the one based on performance and quality, directed at controlling outputs and spending quality according to the objectives and tasks of these agencies;

e) The State will increase investments along with stepping up socialization to involve the entire society in the development of education, training, health, population and family planning, physical training and sports.

To renew the operation mechanism, particularly the finance mechanism of public service non-business units; to step by step implement the policy of appropriately adjusting prices of public non-business services; to attach importance to renewing the finance mechanism of public education, training and health establishments toward autonomy, publicity and transparency. To standardize the quality of education, training and health services; to improve the quality of education, training and health establishments to reach regional and international standards. To renovate and synchronously perfect health insurance and health care policies; to implement health insurance for all according to a roadmap.

6. Modernization of the administration system:

a) To perfect and step up the operation of the Government's electronic administrative information network on the Internet. To step up the application of information and communication technologies in activities of state administrative agencies so that by 2020: 90% of official documents exchanged between state administrative agencies will be in electronic form; cadres, civil servants and public employees will regularly use the e-mail system in their work; electronic data will be used in almost all activities in agencies; most transactions of state administrative agencies will be conducted through the electronic network, at anytime and everywhere and based on multimedia communication applications; most public services will be provided online on the Government's electronic administrative information network at levels 3 and 4, meeting actual needs and serving citizens and enterprises at anytime and everywhere, based on different devices;

b) To apply information and communication technologies in the processing of work of each state administrative agency, between state administrative agencies and in transactions with organizations and citizens, particularly in public administrative services and public services of public non-business units;

c) To display the list of public administrative services on the Government's electronic administrative information network on the Internet. To develop and use electronic forms in transactions between state administrative agencies, organizations and citizens to meet the requirements of simplification and reform of administrative procedures;

d) To effectively implement the quality control systems in state administrative agencies;

e) To implement the Prime Minister's Decision No. 1441/QĐ-TTg of October 6, 2008, approving the plan on investment in working offices in communes and wards to meet the requirement of administrative reform and raise the effect and effectiveness of the state apparatus;

f) To build modern and concentrated working offices of local state administrative agencies in localities where conditions permit.

8. Párrafo 3.18. Página 50: Las iniciativas sectoriales podrían ayudar con la reducción de los aranceles en un sector específico, ¿por qué Vietnam limita su participación con respecto al equipo médico y no se compromete en participar en otras iniciativas sectoriales?

ANSWER: Pursuant to Viet Nam's laws and regulations which are consistent with Viet Nam's commitments in WTO, medical examination and treatment is a conditional business (a medical practice certificate is required for individuals and an operation license is required for medical examination and treatment establishment), in addition to satisfying the general requirements for all investors, organizations and individuals must comply with relevant provisions of the 2009 Law on Medical Examination and Treatment in order to practice in Viet Nam.

Accordingly, the current provisions of the Law on Medical Examination and Treatment and its implementing regulations have clearly defined the conditions for foreigners to practice medical examination and treatment in Viet Nam. Accordingly, the issuance of practicing certificates in Viet Nam for foreigners must meet the general requirements applicable to grant a medical practice certificate (Article 18 of the Law on Medical Examination and Treatment), and the following requirements:

- a) Possessing professional diplomas in health granted or recognized in Viet Nam;
- b) Possessing a certificate of good health for medical practice and treatment;
- c) Possessing language skills in medical examination and treatment specified in Article 23 of this Law;
- d) Possessing judicial history records certified by competent authorities of their own countries;
- e) Possessing a work permit granted by a competent Vietnamese state agency in charge of labor under the labor law;

9. Párrafo 3.21. Página 52: Los frecuentes cambios en los aranceles generan incertidumbre y pueden afectar el acceso de los Miembros de la OMC al mercado vietnamita, ¿se han implementado algún tipo de medidas para que el comercio con los países miembros no se vea afectado?

ANSWER: The Law on drafting and promulgating legal normative documents requires that a draft legal document (in particular on import and export tariffs) must be circulated to related ministries and agencies for comments. In addition, the draft must be published on the website of the Ministry of Finance for a period of 60 days for organizations and individuals to comments. The law also requires each measure, while being published on the official Gazette, to specify a reasonable period between the date when such regulation are made publicly available and the date when they enter into force so that the stakeholders can be acquainted with it.

10. Párrafo 3.102. Varios Miembros en el Comité MSF han manifestado su preocupación por la prohibición de Vietnam de importar despojos. Se conoce por el documento G/SPS/R/63 párrafo 60 que "Viet Nam había levantado su prohibición del comercio de corazones, hígados y riñones procedentes de bovinos, porcinos y aves de corral, pero la prohibición de todos los demás despojos seguía vigente" podría Vietnam aclarar ¿qué tipo de productos están cubiertos por esta medida o medidas que siguen vigentes?

ANSWER: The temporary ban has been lifted from 1 September 2013.

11. Párrafo 3.2.7 Prohibiciones, restricciones y licencias de importación, subíndices 3.42 (pág. 62). Ecuador apreciaría conocer el listado de productos sujetos a licencias tanto automáticas como no automáticas y se detalle los requisitos para la obtención de las mismas. Se apreciará conocer si esta información puede ser provista en uno de los idiomas oficiales de la OMC.

ANSWER: Paragraph 3.2.7 of the Secretariat Report refers to the products which require import licenses of line-management ministries. As regards automatic licenses under the management of Ministry of Industry and Trade, cigarettes, cigars, motorcycles of over 175cc and steel products are subject to automatic import licenses. List of steel products subject to automatic licenses is covered in Annex 1 of the Circular 23/2012/TT-BCT and is reproduced in Table 1 below.

For products under the management of other ministries, list of products subject to licenses are covered in Tables 2 and 3.

TABLE 1 LIST OF STEEL PRODUCTS SUBJECT TO AUTOMATIC IMPORT LICENSING

(Attached to Circular 23/2012/TT-BCT dated 7 August 2012 stipulating automatic import licenses to several steel products of Ministry of Industry and Trade)

Code			Description
			Chapter 72 Iron and steel
7209			Flat-rolled products of iron or non-alloy steel, of a width of 600 mm or more, cold-rolled (cold-reduced), not clad, plated or coated
			- In coils, not further worked than cold-rolled (cold-reduced):
7209	15	00	- - Of a thickness of 3 mm or more
7209	16	00	- - Of a thickness exceeding 1 mm but less than 3 mm
7209	17	00	- - Of a thickness of 0.5 mm or more but not exceeding 1 mm
7209	18		- - Of a thickness of less than 0.5 mm:
			- - - Other
7209	18	91	- - - - Containing by weight less than 0.6% of carbon and of a thickness of 0.17 mm or less
7209	18	99	- - - - Other
			- Not in coils, not further worked than cold-rolled (cold-reduced):
7209	25	00	- - Of a thickness of 3 mm or more
7209	26	00	- - Of a thickness exceeding 1 mm but less than 3 mm
7209	27	00	- - Of a thickness of 0.5 mm or more but not exceeding 1 mm
7209	28		- - - Of a thickness of less than 0.5 mm:
7209	28	10	- - - - Containing by weight less than 0.6% of carbon and of a thickness of 0.17 mm or less
7209	28	90	- - - - Other
7209	90		- Other:
7209	90	10	- - Corrugated
7209	90	90	- - Other
7210			Flat-rolled products of iron or non-alloy steel, of a width of 600 mm or more, clad, plated or coated
			- Plated or coated with tin:
7210	11		- - Of a thickness of 0.5 mm or more:
7210	11	10	- - - - Containing by weight 0.6 % or more of carbon
7210	11	90	- - - - Other
7210	12		- - Of a thickness of less than 0.5 mm:
7210	12	10	- - - - Containing by weight 0.6 % or more of carbon
7210	12	90	- - - - Other
			- Otherwise plated or coated with zinc:
7210	41		- - Corrugated:
			- - - - Containing by weight less than 0.6% of carbon:
7210	41	11	- - - - - Of a thickness not exceeding 1.2 mm
7210	41	12	- - - - - Of a thickness exceeding 1.2 mm but not exceeding 1.5 mm
7210	41	19	- - - - - Other
7210	41	91	- - - - - Of a thickness not exceeding 1.2 mm
7210	41	99	- - - - - Other
7210	49		- - Other:
			- - - - Containing by weight less than 0.6% of carbon
7210	49	11	- - - - - Coated with zinc by the iron-zinc alloyed coating method, containing by weight less than 0.04% of carbon and of a thickness not exceeding 1.2 mm
7210	49	12	- - - - - Other, of a thickness not exceeding 1.2 mm
7210	49	13	- - - - - Of a thickness exceeding 1.2 mm but not exceeding 1.5 mm
7210	49	19	- - - - - Other

Code			Description
			- - - Other
7210	49	91	- - - - Of a thickness not exceeding 1.2 mm
7210	49	99	- - - - Other
7210	61		- - Plated or coated with aluminum-zinc alloys:
			- - - Containing by weight less than 0.6% of carbon:
7210	61	11	- - - - Of a thickness not exceeding 1.2 mm
7210	61	12	- - - - Of a thickness exceeding 1.2 mm but not exceeding 1.5 mm
7210	61	19	- - - - Other
			- - Other
7210	61	91	- - - - Of a thickness not exceeding 1.2 mm
7210	61	99	- - - - Other
7210	69		- - Other:
			- - - Containing by weight less than 0.6% of carbon:
7210	69	11	- - - - Of a thickness not exceeding 1.2 mm
7210	69	12	- - - - Of a thickness exceeding 1.2 mm but not exceeding 1.5 mm
7210	69	19	- - - - Other
			- - - Other
7210	69	91	- - - - Of a thickness not exceeding 1.2 mm
7210	69	99	- - - - Other
7211			Flat-rolled products of iron or non-alloy steel, of a width of less than 600 mm, not clad, plated or coated
			- Not further worked than hot-rolled:
7211	13		- - Rolled on four faces or in a closed box pass, of a width exceeding 150 mm and a thickness of not less than 4 mm, not in coils and without patterns in relief:
7211	13	10	- - - Hoop and strip, of a width exceeding 150 mm but not exceeding 400 mm
7211	13	90	- - - Other
7211	14		- - Other, of a thickness of 4.75 mm or more:
			- - - Of a thickness of 4.75 mm or more but not exceeding 10 mm:
7211	14	11	- - - - Hoop and strip, of a width not exceeding 400 mm
7211	14	12	- - - - Corrugated, containing by weight less than 0.6% of carbon
7211	14	19	- - - - Other
			- - - Of a thickness more than 10 mm:
7211	14	21	- - - - Hoop and strip, of a width not exceeding 400 mm
7211	14	22	- - - - Corrugated, containing by weight less than 0.6% of carbon
7211	14	29	- - - - Other
7211	19		- - Other:
			- - - Of a thickness of 2 mm or more but less than 4.75 mm:
7211	19	11	- - - - Hoop and strip, of a width not exceeding 400 mm
7211	19	12	- - - - Corrugated, containing by weight less than 0.6% of carbon
7211	19	19	- - - - Other
			- - - Of a thickness of less than 2 mm:
7211	19	21	- - - - Hoop and strip, of a width not exceeding 400 mm
7211	19	22	- - - - Corrugated, containing by weight less than 0.6% of carbon
7211	19	23	- - - - Other, of a thickness of 0.17 mm or less
7211	19	29	- - - - Other
			- Not further worked than cold-rolled (cold-reduced):
7211	23		- - Containing by weight less than 0.25% of carbon:
7211	23	10	- - - Corrugated
7211	23	20	- - - Hoop and strip, of a width not exceeding 400 mm
7211	23	30	- - - Other, of a thickness of 0.17 mm or less
7211	23	90	- - - Other
7211	29		- - Other:
7211	29	10	- - - Corrugated
7211	29	20	- - - Hoop and strip, of a width not exceeding 400 mm
7211	29	30	- - - Other, of a thickness of 0.17 mm or less
7211	29	90	- - - Other
7211	90		- - Other:
7211	90	10	- - Hoop and strip, of a width not exceeding 400 mm
7211	90	30	- - - Other, of a thickness of 0.17 mm or less
7211	90	90	- - - Other

Code			Description
7212			Flat-rolled products of iron or non-alloy steel, of a width of less than 600 mm, clad, plated or coated
7212	30		- Otherwise plated or coated with zinc:
7212	30	10	- - Hoop and strip, of a width not exceeding 400 mm
7212	30	20	- - Other, containing by weight less than 0.6% of carbon and of a thickness of 1.5 mm or less
7213			Bars and rods, hot-rolled, in irregularly wound coils, of iron or non-alloy steel
7213	91		- - Of circular cross-section measuring less than 14 mm in diameter:
7213	91	20	- - - Of a kind used for concrete reinforcement (rebars)
7213	99		- - Other:
7213	99	20	- - - Of a kind used for concrete reinforcement (rebars)
7214			Other bars and rods of iron or non-alloy steel, not further worked than forged, hot-rolled, hot-drawn or hot-extracted, but including those twisted after rolling
7214	20		- Containing indentations, ribs, grooves or other deformations produced during the rolling process or twisted after rolling:
7214	20	31	- - - - Of a kind used for concrete reinforcement (rebars)
7214	20	41	- - - - Of a kind used for concrete reinforcement (rebars)
7214	20	51	- - - - Of a kind used for concrete reinforcement (rebars)
7214	20	61	- - - - Of a kind used for concrete reinforcement (rebars)
7215			Other bars and rods of iron or non-alloy steel
7215	50		- Other, not further worked than cold-formed or cold-finished:
7215	50	91	- - - Of a kind used for concrete reinforcement (rebars)
7215	90		- Other:
7215	90	10	- - Of a kind used for concrete reinforcement (rebars)
7219			Flat-rolled products of stainless steel, of a width of 600 mm or more
7219	33	00	- - Of a thickness exceeding 1 mm but less than 3 mm
7219	34	00	- - Of a thickness of 0.5 mm or more but not exceeding 1 mm
7219	35	00	- - Of a thickness of less than 0.5 mm
7220			Flat-rolled products of stainless steel, of a width of less than 600 mm
7220	20		- Not further worked than cold-rolled (cold-reduced):
7220	20	10	- - Hoop and strip, of a width not exceeding 400 mm
7220	20	90	- - Other
			Chapter 73 Articles of iron or steel
7306			Other tubes, pipes and hollow profiles (for example, open seam or welded, riveted or similarly closed), of iron or steel
7306	30		- Other, welded, of circular cross-section, of iron or non-alloy steel:
7306	30	10	- - Boiler tubes
7306	30	20	- - Copper-plated, fluororesin-coated or zinc-chromated steel tubes with an external diameter not exceeding 15 mm
7306	30	30	- - Pipe of a kind used to make sheath pipe (heater pipe) for heating elements of electric flat irons or rice cookers, with an external diameter not exceeding 12 mm
7306	30	40	- - High-pressure pipe
7306	30	90	- - Other
7306	90		- Other
7306	90	10	- - Copper brazed pipes and tubes
7306	90	90	- - Other

TABLE 2 LIST OF GOODS THE IMPORT OR EXPORT OF WHICH IS SUBJECT TO ISSUANCE OF A PERMIT FROM THE MINISTRY OF TRADE

(Attached to Decree No. 12-2006-ND-CP of the Government dated 23 January 2006)

Goods on these Lists applies to import and export activities for both commercial and non-commercial goods, to the import and export of goods in border areas with neighbouring countries, and to goods being both Governmental and non-Governmental aid.

I. EXPORT GOODS

A. EXPORT PERMIT

Description of Goods	
1.	Textiles and garments exported to markets which are subject to quotas as announced by the Ministry of Trade from time to time. (The Ministry of Trade and the Ministry of Industry shall jointly provide guidelines for implementation of the above.)
2.	Goods the export of which needs to be controlled pursuant to international treaties or agreements which Viet Nam has signed or in which it participates, as announced by the Ministry of Trade from time to time.

B. AUTOMATIC EXPORT PERMIT

The Ministry of Trade shall announce the List of goods to which the system of issuance of automatic permits applies from time to time, and shall issue permits in accordance with current regulations on issuance of permits.

II. IMPORT GOODS

A. IMPORT PERMIT

Description of Goods	
1	Goods the import of which needs to be controlled pursuant to international treaties or agreements which Viet Nam has signed or in which it participates, as announced by the Ministry of Trade from time to time.
2	Two-wheeled and three-wheeled vehicles from 175 cm ³ and above. (The Ministry of Trade shall specify the above lines of goods using the HS code numbers on the Import and Export Tariff Duty List and shall guide implementation. The Ministry of Police shall announce entities which are permitted to register use.)
3	Sports weaponry (pursuant to decisions of approval made by the Committee for Sports and Physical Education).

B. PERMIT PURSUANT TO THE QUOTA REGIME

Description of Goods	
1.	Salt
2.	Tobacco raw material
3.	Poultry eggs
4.	Refined sugar, raw sugar

The Ministry of Trade shall specify the above lines of goods to which the quota regime applies, using the HS code numbers on the Import and Export Tariff Duty List.

C. AUTOMATIC IMPORT PERMIT

The Ministry of Trade shall announce the List of goods to which the system of issuance of automatic permits applies from time to time, and shall issue permits in accordance with current regulations on issuance of permits.

TABLE 3 LIST OF GOODS SUBJECT TO SPECIALIZED INDUSTRY MANAGEMENT AND THE APPLICABLE MANAGEMENT PRINCIPLES

(Attached to Decree No. 12-2006-ND-CP of the Government dated 23 January 2006)

Goods on these Lists applies to import and export activities for both commercial and non-commercial goods, to the import and export of goods in border areas with neighboring countries, and to goods being both Governmental and non-Governmental aid.

I. LIST OF GOODS SUBJECT TO SPECIALIZED INDUSTRY MANAGEMENT BY THE MINISTRY OF AGRICULTURE AND RURAL DEVELOPMENT

A.	Export Goods	Form of Management
1.	Rare and precious wild animals, natural fauna and flora for which there is an urgent need to control export pursuant to the CITES Convention which Viet Nam has undertaken to implement. Rare and precious wild animals, natural fauna and flora in Groups IIA and IIB in Decree No. 48-2002-ND-CP of the Government dated 22 April 2002.	The Ministry of Agriculture and Rural Development shall rely on the provisions in the CITES Convention to announce the conditions for export and to provide guidelines on procedures for export. The Ministry of Agriculture and Rural Development shall announce the specific conditions for export and provide specific guidelines on export procedure.
2.	Rare and precious seedlings for growing crops and raising plants.	The Ministry of Agriculture and Rural Development shall provide guidelines pursuant to the Ordinance on Crop Seeds and the Ordinance on Plant Seeds.
3.	Firewood and charcoal made from timber or firewood sourced from wood from domestic natural forests.	The Ministry of Agriculture and Rural Development shall announce the specific conditions for export and provide specific guidelines on export procedure.
B.	Import Goods	Form of Management
1.	Veterinary medicines and raw materials for the production of veterinary medicines, registered for the first time for import into Viet Nam.	License for Testing
2.	Biologically and micro-biologically produced articles and chemicals used in veterinary medicines, registered for the first time for import into Viet Nam.	License for Testing
	(a) Plant protection agents and raw materials for the production of plant protection agents, outside the List of goods permitted to be used in Viet Nam. (b) Plant protection agents and raw materials for the production of plant protection agents, on the List of restricted use goods.	(a) and (b): Import permit specifying the conditions for import, the quantity to be imported and the procedures for issuance of the permit.
4.	Seedlings for growing crops and raising plants, and various types of insects which are not yet found in Viet Nam.	License for Testing
5.	Feed for livestock and raw materials for the production of feed for livestock, of types used for the first time in Viet Nam.	License for Testing
6.	New types of fertilizers used in Viet Nam.	License for Testing
7.	Genes of plants and crops; micro-organisms serving research, scientific and technical exchange.	Import permit specifying the conditions for import and the procedures for issuance of the permit.
8.	Rare wild animals and plants for which there is a need to control import pursuant to the CITES Convention which Viet Nam has undertaken to implement.	The Ministry of Agriculture and Rural Development shall rely on the provisions in the CITES Convention to announce the conditions for import and to provide guidelines on procedures for import.

Management Principles:

1. The Ministry of Agriculture and Rural Development shall promulgate Lists of all types of import goods subject to specialized industry management; and shall announce the types of goods already used in Viet Nam using the correct HS code numbers on the Import and Export Tariff Duty List, and the types of goods enterprises may import into Viet Nam pursuant to their needs without applying for a permit.

2. The Ministry of Agriculture and Rural Development shall issue Licenses for Testing for types of goods imported into Viet Nam for the first time, and for goods on the List of goods already used in Viet Nam. The contents of Licenses for Testing and the duration of testing shall be implemented in accordance with guidelines of the Ministry of Agriculture and Rural Development. Depending on the test results, the Ministry of Agriculture and Rural Development shall issue a decision permitting or not permitting the goods to be used in Viet Nam. Once the Ministry of Agriculture and Rural Development permits a type of goods to be used in Viet Nam, such type of goods may be imported as needed, without restriction on quantity or value and without application for a permit.

II. LIST OF GOODS SUBJECT TO SPECIALIZED INDUSTRY MANAGEMENT BY THE MINISTRY OF MARINE PRODUCTS

1. Specialist management by the Ministry of Marine Products shall take the form of promulgation of the following Lists of goods, using the HS code numbers on the Import and Export Tariff Duty List:

- (a) List of the types of marine products the export of which is conditional;
- (b) List of the types of goods serving aquaculture the import of which is conditional;
- (c) List of marine seedlings which may normally be imported and exported;
- (d) List of drugs, chemicals and raw materials for the production of drugs and chemicals used in aquaculture which may normally be imported.

2. Management principles:

(a) The Ministry of Marine Products shall promulgate the Lists of goods on lists (a) and (b) above and announce the conditions for import and export. Entities which satisfy the conditions may directly conduct import and export procedures with the customs office and there shall be no need to apply for a permit from the Ministry of Marine Products.

(b) All types of seedlings, drugs, chemicals and raw materials for the production of drugs and chemicals which are not yet named on Lists (c) and (d) above may only be imported into Viet Nam with an import permit for testing issued by the Ministry of Marine Products. Every six months and annually, the Ministry of Marine Products shall supplement onto the Lists those types of goods which have good test results. When the Ministry of Marine Products adds such goods to the Lists of goods which may normally be imported, the goods may be imported as needed without restriction on quantity and value, and there shall be no need to apply for an import permit.

III. LIST OF GOODS SUBJECT TO SPECIALIZED INDUSTRY MANAGEMENT BY THE STATE BANK

A.	Export Goods	Form of Management
	Nil.	
B.	Import Goods	Form of Management
1.	Machines for destroying money (pursuant to technical criteria stipulated by the State Bank).	Import permit
2.	Cash safe doors (pursuant to technical criteria stipulated by the State Bank).	Import permit
3.	Paper for printing money.	Appointment of an enterprise permitted to import

B. Import Goods		Form of Management
4.	Ink for printing money.	Appointment of an enterprise permitted to import
5.	Anti-counterfeit colour press used for money, cheques, stamps and other valuable papers which the banking industry issues and controls.	Appointment of an enterprise permitted to import
6.	Money printing machines (pursuant to technical criteria announced by the State Bank).	Appointment of an enterprise permitted to import
	Metal casting machines and machines for stamping money (pursuant to technical criteria announced by the State Bank).	Appointment of an enterprise permitted to import

Management principles

The State Bank shall promulgate the List of goods subject to specialized industry management using the HS code numbers on the Import and Export Tariff Duty List, and shall appoint enterprises permitted to import the types of items specified on this List; shall regulate the conditions for import and the procedures for issuance of an import permit; and shall be responsible to manage the use of machinery, equipment and goods for the correct objective.

IV. LIST OF GOODS SUBJECT TO SPECIALIZED INDUSTRY MANAGEMENT BY THE MINISTRY OF POSTS AND TELECOMMUNICATIONS

A. Export Goods		Form of Management
	Nil.	
B. Import Goods		Form of Management
1.	Postage stamps, stamp publications and lines of stamp goods.	Import permit
2.	Radio transmitters and receivers with a frequency from 9KHz to 400GHz and a capacity of 60mW upwards.	Import permit
3.	Radar equipment, radio wave assisted equipment and long-range radio wave controlling apparatus.	Import permit

Management principles

The Ministry of Posts and Telecommunications shall promulgate the List of specific goods using the HS code numbers on the Import and Export Tariff Duty List, and shall regulate the conditions for import and the procedures for issuance of an import permit.

V. LIST OF GOODS SUBJECT TO SPECIALIZED INDUSTRY MANAGEMENT BY THE MINISTRY OF CULTURE AND INFORMATION

A. Export Goods		Form of Management
1.	All types of printed matter (books, newspapers, magazines, pictures, photos, calendars and so forth).	File on source of the goods
	Cinematographic works and other visual-aural products recorded on any material.	File on source of the goods
	Newly produced artistic works of all types, made on any material.	File on source of the goods
	Relics and antiques not owned by all the citizens, by political organizations or by socio-political organizations.	Export permit
B. Import Goods		Form of Management
1.	All types of printed matter (books, newspapers, magazines, pictures, photos, calendars and so forth).	Approval of contents
2.	Cinematographic works and other visual-aural products recorded on any material.	Approval of contents
3.	Plate-making systems and type-setting systems for specialist use in the printing industry.	Import permit specifying the conditions for import and procedures for issuance of the permit.
4.	Printing machines (offset, Flexor and bronze cylinder printers) and colour photocopiers.	Regulations on conditions

B.	Import Goods	Form of Management
5.	Equipment for receiving television signals from satellites (TVRO).	Regulations on conditions
6.	Electronic games machines with built-in prizes and specialized equipment for games in casinos.	Regulations on conditions (regarding the equipment and the built-in programmes). Enterprises having an issued investment license or having business registration pursuant to Decision No. 32-2003-QD-TTg of the Prime Minister of the Government dated 27 February 2002 shall be permitted to import these machines.
7.	Children's games.	Announcement of the properties and types of games permitted to be imported.

Management Principles

1. The Ministry of Culture and Information shall promulgate the above Lists of specific goods using the HS code numbers on the Import and Export Tariff Duty List.

The products listed in clauses 1, 2 and 3 of Section A shall be permitted to be exported on request, and procedures shall be resolved at customs, when:

- The items are permitted to be produced and circulated in Viet Nam, or
- They have a certificate clearly stating the source of the items.

The Ministry of Culture and Information shall be responsible to provide specific guidelines on these principles, and shall not issue export permits nor approve the contents, quantity or value of export products.

2. With respect to aural-visual products not being cinematographic works, the Ministry of Culture and Information shall authorize Departments of Culture and Information to approve their contents.

VI. LIST OF GOODS SUBJECT TO SPECIALIZED INDUSTRY MANAGEMENT BY THE MINISTRY OF HEALTH

A.	Export Goods	Form of Management
	Nil.	
B.	Import Goods	
1.	Addictive substances, substances which act on the central nervous system, and precursors (including finished product medicines).	Import permit specifying the conditions for import and procedures for issuance of the permit
2.	Preventive and curative medicines for humans, being finished products, with a registered number.	Permitted to be imported pursuant to need, without verifying the order for import
3.	Preventive and curative medicines for humans, being finished products, but without a registered number.	License for Testing
4.	The following items being new types used in Viet Nam, namely raw materials for the production of medicines, pharmaceutical drugs and adjuvant, empty capsules and packaging which directly contacts medicine.	License for Testing
5.	Cosmetics directly impacting on human health.	Registration of circulation
6.	Vaccines and immune biological products outside the List of goods permitted to be imported as needed.	Import permit
7.	Medical equipment which may directly impact on human health, outside the List of goods permitted to be imported as needed.	Import permit
8.	Chemicals and products for the extermination of insects and bacteria, used in homes and in medicine generally.	Registration of circulation

Management principles

1. With respect to raw materials for the production of medicines, pharmaceutical drugs and adjuvant, empty capsules and packaging which directly contact medicine; vaccines and immune biological products; and medical apparatus, the Ministry of Health shall announce the List of items permitted to be imported as needed, but outside this List there must be an import permit specifying the conditions for import and procedures for issuance of the permit.

2. Items in the category of regulation by testing licenses must comply with the contents of the testing and the period for testing in accordance with guidelines of the Ministry of Health. Depending on the test results, the Ministry of Health shall make a decision permitting or not permitting use in Viet Nam.

When the Ministry of Health permits the use of items in Viet Nam, they may be imported as needed without restriction on quantity or value, and there shall be no need to apply for an import permit or produce verification of an order for import of the goods.

3. Once commodities in the category of regulation by registration for circulation have a registered number, they may be imported as needed without restriction on quantity or value, and there shall be no need to apply for an import license or produce verification of an order for import of the goods.

4. The Ministry of Health shall provide for implementation of and shall detail the above Lists of goods using the HS code numbers on the Import and Export Tariff Duty List.

VII. LIST OF GOODS SUBJECT TO SPECIALIZED INDUSTRY MANAGEMENT BY THE MINISTRY OF INDUSTRY

A.	Export Goods	Form of Management
1.	Toxic chemicals and products containing toxic chemicals. Drug precursors used in the industrial sector (pursuant to the Law on Fighting Drugs and other relevant legal instruments).	Promulgation of a List of export goods including those subject to conditions, and the criteria or export permit applicable to each item.
2.	Minerals.	Promulgation of a List of export goods subject to conditions, specifying the conditions or criteria applicable.
3.	Industrial explosives.	Permit
B.	Import Goods	
1.	Toxic chemicals and products containing toxic chemicals. Precursors used in the industrial sector.	Promulgation of a List of import goods specifying the conditions, the criteria for import or the import permit applicable to each item.
2.	Sodium hydroxide (liquid form).	Regulations on standards
3.	Chloric acid.	Regulations on standards
4.	Manufactured sulphuric acid.	Regulations on standards
5.	Pure sulphuric acid.	Regulations on standards
6.	Manufactured phosphoric acid.	Regulations on standards
7.	Alums from the hydroxide chemical group.	Regulations on standards
8.	Industrial explosives.	Import permit specifying the conditions for
	High concentration ammonium nitrate (NH ₄ NO ₃).	Import and procedures for issuance of the permit.

Management principles

With respect to lines of goods set out in groups 2 to 7 inclusive of Section B, the Ministry of Industry shall only regulate the conditions for import or the technical criteria which must be satisfied in order to import; an import permit or certificate of verification shall not be required, and it shall not be necessary to obtain approval of the quantity or value of goods to be imported.

VIII. LIST OF GOODS SUBJECT TO SPECIALIZED INDUSTRY MANAGEMENT BY THE MINISTRY OF NATURAL

RESOURCES AND ENVIRONMENT

A.	Export Goods	Form of Management
	Nil.	
B.	Import Goods	
1.	Scrap.	Regulations on conditions or standards.

Management principles

On the basis of the conditions or standards for permitting the import of scrap, importing enterprises shall directly conduct import procedures with the customs office.

The Ministry of Natural Resources and Environment shall promulgate the above List of specific goods using the HS code numbers on the Import and Export Tariff Duty List.

IX. LIST OF GOODS SUBJECT TO SPECIALIZED INDUSTRY MANAGEMENT BY THE MINISTRY OF TRANSPORT

A.	Export Goods	Form of Management
	Nil.	
B.	Import Goods	
1.	All types of flares used for maritime safety. The Ministry of Transport shall promulgate this List using the HS code numbers on the Import and Export Tariff Duty List, and shall regulate the procedures for issuance of permits.	Issuance of a permit

12. Párrafo 3.44. Página 63: ¿Podría Vietnam ampliar la información sobre la incidencia en la reducción de sus importaciones debido a la promulgación de la lista de artículos y productos de consumo importados no esenciales?

ANSWER: List of "non-essential" imported commodities and consumer goods not encouraged for import issued by the Ministry of Industry and Trade of Viet Nam is a reference document for relevant ministries and agencies to develop policies consistent with WTO, such as increase or decrease in MFN tax in line with the international commitments of Viet Nam; application of technical measures to trade in line with TBT Agreement in WTO. This document thus does not have a binding nature and does not restrict imports.

13. Párrafo 3.8. ¿Cuáles han sido los impactos de las medidas adoptadas por Vietnam para simplificar los procedimientos y prescripciones de importación?

ANSWER: Paragraph 3.8 mostly deals with the streamlined process to establish a business in Viet Nam and it is not quite relevant to the question put forward above. However, Viet Nam would like to clarify that Viet Nam issued a number of regulations in order to simplify its administrative procedures and facilitate companies in doing their business such as the ASEAN single-window mechanism (as provided for in the Joint Circular No. 84/2013/TTLT-BTC-BCT-BGTVT dated 25 June 2013 guiding Decision 48/2011/QD-TTg dated 31 August 2011 on pilot ASEAN single-window mechanism) and the system to manage and grant the electronic certificate of origin (EcoSys) (as provided for in Circular 06/2011/TT-BCT dated 21 March 2011 stipulating the procedures to grant preferential certificate of origin and Circular 01/2013/TT-BCT dated 24 January 2013 amending and supplementing Circular 06/2011/TT-BCT).

14. Párrafo 3.11., "sólo las empresas autorizadas pueden importar productos objeto de "comercio de Estado". Así pues, sólo los importadores autorizados pueden introducir en Vietnam cigarrillos (puros) y cigarrillos". Al establecer un determinado número de empresas como oferentes de cigarrillos y cigarrillos, ¿Cómo se asegura Vietnam que las compras-ventas que se realizan en su mercado interno se ajusten a consideraciones exclusivamente de carácter comercial, en consonancia con las disposiciones en materia de empresas comerciales del Estado y las disposiciones de su Ley de Competencia

(Capítulo 3, página 94, párrafo 3.144.), que prohíbe con carácter general los actos que constituyan competencia desleal o restrinjan la competencia, como los acuerdos de restricción de la competencia o el abuso de la posición dominante o de monopolio?

ANSWER: Viet Nam maintains exclusive import system (state trading) in line with its WTO commitments.

15. Párrafo 3.31., sobre el Impuesto Especial de Consumo: "no se establece distinción alguna entre productos importados y de producción nacional, pero en el caso de las importaciones el impuesto especial de consumo se percibe sobre el precio de importación, derechos incluidos" ¿Podría indicarnos Vietnam si existe la posibilidad de utilizar al precio ex fábrica para la determinación de la base imponible del impuesto de consumo especial en lugar del de importación, y cómo el cálculo de este impuesto (con el precio de importación) se ajusta a las disposiciones en materia de no discriminación de mercancías importadas similares a las de producción nacional?

ANSWER: According to Law on Excise Tax 2008, price for calculating excise tax on imported goods is the total of import price and import tax. This provision is in conformity with the principle of non-discrimination between import goods and like domestic goods. Therefore, Viet Nam has not been planning to calculate the excise tax for import goods levying on ex-factory price.

16. Capítulo 3, página 56, nota al pie 24, "el Decreto No 26/2009/ND-CP, que ofrece orientación para aplicar la Ley del Impuesto Especial de Consumo, parece permitir el uso del precio de producción como base impositiva en determinadas circunstancias, a modo de excepción. En el caso del vino y las bebidas alcohólicas, esa disposición puede llegar a equivaler a una rebaja fiscal del 10% para los productores nacionales". ¿Podría informarnos Vietnam las razones por las cuáles se utiliza -para la determinación de la base imponible del impuesto- al precio de producción y no al ex fábrica, cómo afecta esto a las importaciones (conforme el ejemplo de vino y bebidas alcohólicas) de productos similares, competidores o sustitutos de la producción nacional y cómo esta disposición se ajustaría al principio de trato nacional?

ANSWER: Current excise tax of Viet Nam on wines and sprits is applied without discrimination of tax base between import products and like domestic products in conformity with the non-discrimination principle of the WTO.

According to Decree No. 26/2009/ND-CP, this measure is used in order to precisely collect excise tax on products sold through commercial channels. For the purpose of preventing fraud in calculating excise tax, this provision is used to avoid the situation that tax-included price being excessively lower than production price.

17. Párrafo 3.34, ¿Podría Vietnam explicarnos si el Impuesto de Protección al Medio Ambiente se aplica solo a los productos importados?

ANSWER: The Environment Protection Tax applies to products and goods specified in the Law on Environment Protection Tax and those products and goods when used could be harmful to the environment. The Environment Protection Tax applies both for imported products as well as domestic products.

18. Párrafo 3.40, "la prohibición de importar grandes motocicletas nuevas (con motor de cilindrada superior a 175 cc) se reemplazó por un sistema de licencias automáticas" ¿Podría informarnos cuál es la medida y su justificación normativa que, al amparo de las disposiciones OMC, se operativiza mediante estas licencias de importación?

ANSWER: The automatic import licensing system does not restrict import quantities and is automatic. There is no condition to be met to be granted a license, but a fully valid dossier of applicants. The regulations and procedures in this regard comprehensively comply with the Agreement on Import Licensing Procedures of WTO.

19. Párrafo 3.44.: "en abril de 2010, el Ministerio de Industria y Comercio promulgó una larga lista de artículos y productos de consumo importados "no esenciales" cuya importación no se fomentaba. Posteriormente, el Banco del Estado de Vietnam dio instrucciones a las instituciones de crédito para que examinaran detenidamente o restringieran la concesión de préstamos en divisas para financiar las importaciones de los artículos incluidos en la lista". Partiendo del criterio de que las instrucciones otorgadas a las instituciones de crédito sobre la concesión de préstamos en divisas para las importaciones de bienes no esenciales, eventualmente, determinarían la realización de una importación ¿Podría indicarnos Vietnam cómo la medida se ajusta a las disposiciones en materia de la eliminación de restricciones cuantitativas, particularmente, en lo referente al párrafo 1 del artículo XI del GATT/94?

ANSWER: List of "non-essential" imported commodities and consumer goods not encouraged for import issued by the Ministry of Industry and Trade of Viet Nam is a reference document for relevant ministries and agencies to develop policies consistent with WTO, such as increase or decrease in MFN tax in line with the international commitments of Viet Nam; application of technical measures to trade in line with TBT Agreement in WTO. This document thus does not have a binding nature and does not restrict imports.

The issuance of this Decision is completely not intended to restrict the provision of foreign currency loans to finance imports of the listed items. Current regulations do not allow the Government or the State Bank of Viet Nam to get involved in business activities of commercial banks and credit institutions. Commercial banks and credit institutions in Viet Nam have the right to decide, in accordance with current legislation, which enterprises to provide foreign currency loans to import goods (without any discrimination between essential and non-essential goods). Therefore, this decision does not restrict imports and does not breach WTO rules.

20. Párrafo 3.7.2 ¿Cuáles han sido los impactos del programa nacional de promoción del comercio adoptado por Vietnam para promover sus exportaciones?

ANSWER: Viet Nam National Trade Promotion Program has been carried out since 2006. So far, the Program has produced positive impact on the country's export, facilitated enterprises with opportunities of approaching and expanding export market, helped maintaining and diversifying exports. The Program also contributed to improving trade promotion skills for Vietnamese businesses, industry associations and trade promotion agencies at all levels.

21. Párrafo 4.1." la atención se concentra en un desarrollo más bien orientado hacia el interior en determinadas actividades (por ejemplo minería y manufacturas), que conlleva, entre otras cosas, objetivos en materia de contenido nacional, valor añadido interno y mejora de la participación en el mercado", cuando se refieren a la protección de las manufacturas es baja en relación a la agricultura ¿Podría indicarnos cómo esta medida cumple con el objetivo de contenido nacional en las manufacturas y su compatibilidad con el Acuerdo sobre las Medidas en Materia de Inversiones Relacionas con el Comercio y el principio de no discriminación, cuando se trata de mercancías importadas similares a las de producción nacional?

ANSWER: Viet Nam has complied fully with the obligations under the TRIMs Agreement upon its accession to the WTO. These commitments have been incorporated in Article 11 Law on Investment 2005. Viet Nam does not adopt or maintain any measure inconsistent with its TRIMs commitments.

22. Párrafo 3.152., en lo referente al establecimiento de precios mínimos (o máximos) para, entre otros, los cigarrillos de producción nacional. Considerando que existen determinadas empresas autorizadas para importar cigarrillos (Capítulo 3, página 48, párrafo 3.11.) podría informarnos Vietnam:

a) ¿Cómo se fija este precio mínimo para el cigarrillo y su relación con el precio normal de mercado, su ajuste respecto al precio de equilibrio del mercado?

b) ¿Si son precios que se determinan por encima del nivel de equilibrio, bajo qué disposiciones de la normativa multilateral se justifica esta medida?

ANSWER: Domestically produced cigarettes are not encouraged to be domestic consumed and being subjected to List of Goods and Services priced by the State in the form of setting maximum or minimum prices. Accordingly, the authority directly administering the business establishments or the business establishments produce minimum price plans and submit them to the line Ministries (in this case is the Ministry of Industry and Trade) to evaluate. Upon completion of the evaluation Ministry of Industry and Trade sends an official letter to the Ministry of Finance with a request to decide the minimum price.

QUESTIONS FROM EL SALVADOR

Question 1: Paragraph 4.100 of the report states that textile and garment industry in Vietnam is mostly located in industrial parks or craft villages. Could Vietnam explain the current benefits of operating in industrial parks or craft villages, for example, access conditions to land, tax exemptions, fiscal benefits of any type of discounts? What is the current legislation that Vietnam applies for this matter?

ANSWER: The enterprises at industrial zones and craft villages shall be enjoyed incentives according to Decision No 105/2009/QĐ-TTg dated 19 August 2009 of the Prime Minister on issuing the rule on management of industrial complexes and Decree số 66/2006/ND-CP dated 7 July 2006 of the Government on development of rural trade. However, these benefits are not only applied for textile and garment enterprises but for all general enterprises at the industrial complexes/industrial zones and at craft villages, that is:

a) For investment in the industrial zones/industrial complexes

An enterprise use land at the industrial zones or industrial complexes might have have the duration of land leasing for 50 years.

Besides, these enterprises shall have the right to use and pay charges for public infrastructure facilities and other services within industrial complexes under regulations; to contribute capital to building and commercially operating infrastructure as agreed with the infrastructure operator; to enjoy assistance in recruiting and training labor to meet production and business requirements; to enjoy other incentives and supports as provided for by law pursuant to Decision 105.

Basing on the actual conditions at each area, the provincial authorities might issue the specific rule to encourage the enterprise investing in the industrial zones/industrial complexes.

b) For investment in the craft villages

Domestic and foreign organizations and individuals that directly invest in the development of production and services of rural trades in rural areas (including small- and medium-sized enterprises established and operating under the Enterprise Law; cooperatives established and operating under the Cooperative Law; family businesses registered under business registration regulations), especially the rural trade establishments having efficient investment projects, shall enjoy incentives in production sites,

For production sites

The State shall assist investment in trade village infrastructure and rural trade establishments' outside-fence infrastructure

Rural trade establishments having efficient investment projects shall:

- Be provided with favorable conditions in receiving land assigned with land use levy payment or renting land in clusters of rural trade establishments and be granted a land use rights certificate according to the provisions of the Land Law;
- Investment projects satisfying strict requirements on treatment of environmental pollution and requirements on research into and production of new products shall be prioritized in receiving land assigned with land use levy payment or renting land in industrial parks or clusters;
- Rural trade establishments relocating from residential areas to planned areas shall get incentives in land use levy, land rent and land use tax and receive financial assistance for relocation.

For investment and credit

Local budget shall be allocated to cover part of investment costs for infrastructure construction and environmental treatment in trade villages and clusters of rural trade establishments. Provinces having budget revenue difficulties shall receive supports from the central budget which shall be incorporated in annual budget estimates.

The production and business projects operating with good results shall:

- a. Be entitled to investment incentives under the Investment Law;
- b. Be entitled to post-investment interest supports under current regulations;
- c. Get loans from the Employment Assistance Fund under current regulations;
- d. Enjoy development investment credit and export credit under relevant state policies;
- e. Be guaranteed by the Credit Guarantee Fund for Small- and Medium-sized Enterprises to get loans from credit institutions.

For trade promotion

The State shall encourage, facilitate and support rural trade establishments to conduct trade promotion activities under current regulations on the national trade promotion program.

Based on practical local conditions, provincial-level People's Committees shall support rural trade establishments to develop brand names and geographical indications of goods and adopt policies for trademark protection.

For science and technology

Rural trade establishments shall be entitled to incentives under incentive policies and financial mechanisms for enterprises investing in scientific and technological activities when they apply scientific and technological results, renew technologies, make new products and provide scientific and technological services or receive scientific and technical advances from domestic and foreign organizations and individuals.

Rural trade establishments conducting independent research projects, or collaborating with scientific research agencies in creating new technologies or perfecting commercially viable research products in the rural trade domain shall receive financial support from the state budget for non-business scientific and technological activities.

State budget for agricultural, fisheries and industrial extension work shall be used to assist rural trade establishments in communication and propaganda activities; model construction and scientific and technological transfer; refresher training and training; and consultancy and services.

For human resource training

Investment projects on setting up rural vocational training establishments shall enjoy state policies on development investment credit to train human resources for trades to be developed under the master plan on rural trades development.

Local budget shall be allocated to finance part of training costs for rural trade establishments opening training in trades.

Rural trade artisans organizing training in trades may collect training fees from trainees on the principle of mutual agreement; shall be entitled to remuneration when they provide training at training establishments according to the establishments' regulations; and be entitled to tax incentives for such training activities under current regulations.

Rural laborers attending vocational training shall get assistance in training costs according to polices on short-term vocational training assistance for rural labor; and get loans from the national employment program.

Vietnamese law applied for textile and garment

Besides common regulation on enterprises, land use, tax, investment, there are some specific regulation for textile and garment:

- (1) Decision No. 36/2008/QD-TTg of the Prime Minister approving the development strategy of Vietnam Textile and Garment Industry in 2015, driven by 2020;
- (2) Decision No. 42/2008/QD-BCT of the Ministry of Industry and Trade approving the development plan of Vietnam Textile and Garment Industry in 2015, driven by 2020;
- (3) Decision 12/2011/QD-TTg Decision dated 24 May 2011 02 of the Prime Minister on a number of policies to develop support industries ;
- (4) Decision 1483/QD-TTg Decision dated 26 May 2011 08 of the Prime Minister promulgating the list of products supporting industry development priorities ;
- (5) Decision 39/2008/QD-BCT Decision of the Ministry of Industry and Trade of the training program approved manpower Vietnam Textile industry in 2015 , with a vision to 2020 ;
- (6) Decision 43/2008/QD-BCT Decision of the Ministry of Industry and Trade of the program approved woven production for export in 2015.

Question 2: Also, paragraph 4.100 makes reference to a state-owned company named Vietnam National Textile Garment Group (Vinatex). Could Vietnam explain how this company is organized and also, what type of support receives?

Answer: Pursuant to the Decision No.340/QD-TTg 2011 of the Prime Minister dated 07 May 03 approving the charter on organization and operation of the Vietnam Textile and Garment Group:

Vietnam Textile and Garment Group (VINATEX) is a limited liability company which the State contributes 100 % of the charter capital , operating under the provisions of law and the Charter that is issued by the Prime Minister.

Vietnam Textile and Garment Group have legal status , seal , logo , Vietnamese Dong accounts and foreign currency accounts opened at the State Treasury, the domestic banks and abroad banks in accordance with the law.

The State is the owner of VINATEX . Government implement rights and obligations on behalf of the owner of VINATEX . Prime Minister directly perform or authorize the ministerial -level agencies , the agencies attached to the Government implementing a number of rights and obligations on behalf of the owner of VINATEX as prescribed by law .

The legal representative of VINATEX is the General Director. The organizational structure of VINATEX includes:

- a. Council members.
- b. General Director.
- c. Vice General Director, Chief Executive Officer, Chief Accountant.
- d. Assisting apparatus, the internal control board.

The organizational structure of VINATEX can be changed to suit with business requirements during its operation.

Pursuant to Decision 320/QD-TTg 2013 of the Prime Minister dated 08 May 02 approving the project "Restructuring the Vietnam Textile and Garment Group (VINATEX) 2013-2015 period", at the present VINATEX is completing equitization.

Currently, the incentives that VINATEX is enjoyed are the same to other companies in the textile industry .

Question 3: According to Paragraph 4.101 Vietnam has implemented since 2008 the Master Plan for the Textile Sector until 2015 with orientation to 2020, where export-orientation development will be encouraged. Could Vietnam explain what type of measures and incentives will the government implement in order to increase exports and encourage the textile industry to meet its goals for production in the following years? Could Vietnam provide more details about the strategy for the development of the textile and garments sector for the 2015-2020 period?

ANSWER:

Incentives for investment in textile and garments

In 2008, the Prime Minister issued Decision No. 36/2008/QD-TTg of March 14, 2008 approving the Development Strategy of Textile and Garment Industry of Viet Nam towards 2015 with the orientations to 2020. Following this Decision, Minister of the Ministry of Industry and Trade issued Decision 42/2008/QD-BCT approving the development plan of Viet Nam Textile and Garment Industry to 2015 and orientations to 2020.

Some incentives as set out in Decision 36 are as follows:

- a. Encouragement of all economic sectors inside and outside the country to invest in development of textile and garment industry serving domestic demand and exports.
- b. Development of investment projects in the fields of textile, dyeing, manufacturing of raw cotton and synthetic fiber, and raw material production to call for domestic and foreign investors.
- c. Development of textile and garment specialized industrial zones with adequate infrastructure for power supply, water supply, wastewater treatment to meet environmental requirements and capable of labor training.

Focus on capacity and negotiation opportunities to expand textile and garment market, especially multilateral treaties, regional agreements and bilateral agreements with countries identified as most important export market in the present and near future. Enhancing the role of trade representatives in countries;

Develop a trade promotion strategy suitable in each respective country and serving the needs of global retailers and international buyers. Facilitate and encourage investors and businesses in the U.S., EU, Japan, Taiwan, Korea, China to invest in Viet Nam, producing new goods and expanding export markets;

Develop policies to encourage the production of export goods within the framework of the WTO: focus on the assistance of market entry capability, support of participation in fairs and exhibitions, support of the connection with investors, buyers, and assistance of the training of human resources in marketing, sales, and purchasing services;

Improve the effectiveness of trade promotion centers of the provinces, building these centers to become the places where information on policies and input markets are provided;

Reform the administrative procedures in investment, import and export in the direction of cooperation between the management agencies to implement the one-stop mechanism, simplify procedures and shorten time further, and specify clearly the time-frame for the implementation of the authorities.

Some incentives as set out in the Decision 42/2008/QĐ-BCT are as follows:

a) The policy and solutions on investment

To associate investment in developing the textile and garment industry with international cooperation, to make the utmost use of the trend of shifting textile and garment investment from developed countries.

To encourage all domestic economic sectors to invest in the industry.

To concentrate on investment in producing fabrics and raw and auxiliary materials for export production. To formulate a program to manufacture shuttle-woven fabrics for the production of garment exports;

To formulate a program to develop cotton trees under which priority will be given to irrigated cotton growing areas in provinces with potential;

Through joint ventures with local and foreign enterprises to invest in projects of production of artificial fibers, and yarns of high quality and with new features serving the demands of the market.

Promote investment in the garment industry to increase exports and create conditions to boost the production of fabrics and accessories to gradually replace imports. Shifting garment firms from the large urban centers to provinces to reduce labor pressure and contribute to the restructuring of the local labor;

Construction of industrial zones specialized in textiles in key areas to focus on environment processing for new investment projects in the textile industry and the relocation of textile enterprises causing pollution from big city centers.

b) Solutions for raw material supply

Constructing supply centers of raw materials in Hanoi, Ho Chi Minh City and other major cities to timely supply raw materials for businesses in the sector;

Attracting foreign investment and mobilizing domestic capital sources to invest in manufacturing petroleum products (fiber, yarn, chemicals, dyes and etc.) to serve the demand of materials of the textile industry, enhance the localization rate and added value of textile products.

c) Policies and market solutions

Expansion of export markets is an important element in the development strategy of garment and textile exports, and one of the decisive factors contributing to the growth of the garment and textile industry in Viet Nam.

To expand the market, the State and enterprises are to implement the following measures:

The State management agencies:

- Concentrating all abilities and opportunities to help businesses in negotiations to expand textile market in the international market;
- Promoting the reform of administrative procedures in the field of taxation, customs, import and export through one-stop mechanism, simplifying procedures. Strengthening inspection and control of the market, smuggling, and tax evasion;
- Strengthening the legal advices of international trade law to help exporters overcome the barriers of the importing country.

Textile and garment enterprises in the industry: organize and expand retail network in the country, innovate export marketing methods, and pay attention to develop product brand, and build the image of Viet Nam's textile and garment industry as "quality – responsibility – environmentally friendly" in the international market.

d) Solutions to human resource development

Develop training programs for human resource of Viet Nam Textile industry:

- Organize the training programs for managers, legal staff, technical staff, especially fashion designers, and staff in charge of planning, marketing and training for skilled workers;
- Combine long-term training with short-term training, formal training with on-site training, training within Viet Nam and training abroad;
- Strengthen and expand textile specialized training systems, and construct the University of Textile and Fashion for the training.

Viet Nam Textile and Garment Association and the Viet Nam Textile and Garment Group are the focal points for coordination and linkages with local and foreign training institutions for the implementation of training programs for human resources in the industry.

e) Scientific and technological solutions

Study the application of new technologies and new materials to produce textile products with different features, implement the program of cleaner production, energy efficiency, and software application in design, production management and quality of textile products;

Promote research and production of raw materials to replace imported materials, adequate investment for research and product design and quality control of products; and overcoming technical barriers of the importing countries;

Reorganization of the Institutes of Textile Industry with the direction of self-management and self-responsibility. Enhancing capacity of consultancy, research and development, technology transfer, and the ability to design and compose samples/patterns of research institutes.

f) Environmental protection measures

Focus on processing water pollution sources in textile companies. In Textile Industrial Zones, sewage treatment systems are required to be built, meeting the environmental standards prescribed by the State;

Accelerate the implementation of cleaner production program in textile and garment companies, apply environmental standards and product standards, and create good working environment for employees in accordance with the standards of SA 8000, and ISO 14000;

Develop and implement technology innovation roadmap of textile and garment industry with the materials -saving and environment -friendly directions;

Strengthen scientific and technological research on environment to meet environmental requirements and overcome technical barriers in the international economic integration.

g) Financial solutions

Encourage all economic sectors in the country and abroad to pour investment in the industry. Encourage enterprises to participate in the stock market to create channels to raise capital (through the issuance of bonds, stocks and international bonds);

State provides funding for research, training and infrastructure to enhance capacity of research institutes and training facilities for textile and garment industry;

The investment projects treating the environment of companies in the textile and garment sector have chances to get loans from the state credit, ODA and the environmental fund.

Details of contents of Decision 42/2008/QĐ-BCT can be seen at the address http://www.chinhphu.vn/portal/page/portal/chinhphu/hethongvanban?class_id=1&page=53&mode=detail&document_id=80768.

Development Strategy of Textile and Garment industry Viet Nam towards 2015 with the orientation to 2020 sets some objectives as follows:

Overall goal: Develop the Textile and Garment Industry so that it becomes one of the key industries and the spearhead for the country's export, meets the increasing domestic consumption demand, creates more jobs for the society and improve the competitiveness and the integration capacity into the regional and world economy.

Specific objectives:

Growth rate	2008-2010 Period	2011-2020 Period
Annual production growth rate	16-18%	12-14 %
Annual export growth	20%	15%

The main targets in the Strategy for development of Viet Nam Textile and Garment industry towards 2015 with the direction to 2020 are as follows:

Targets	Calculation Unit	Implementation 2006	Sector goals to		
			2010	2015	2020
1. Revenue	million USD	7.800	14.800	22.500	31.000
2. Export	million USD	5.834	12.000	18.000	25.000
3. Employers	thousands	2.150	2.500	2.750	3.000
4. Localization rate	%	32	50	60	70
5. Products:					
Cotton fiber	1000 tons	8	20	40	60
Fiber, synthetic fiber	1000 tons	-	120	210	300
Yarn	1000 tons	265	350	500	650
Fabric	million m ²	575	1.000	1.500	2.000
Garments	million SP	1.212	1.800	2.850	4.000

At the same time, to achieve the above objectives, in the Development Strategy, the Prime Minister set out a number of measures to implement the Strategy.

Details can be found in Decision No. 36/2008/QĐ-TTg of the Prime Minister approving the development strategy of Viet Nam Textile and Garment Industry towards 2015 with the orientations to 2020, available at http://vanban.chinhphu.vn/portal/page/portal/chinhphu/hethongvanban?class_id=1&mode=detail&document_id=60675.

QUESTIONS FROM THE EUROPEAN UNION

SECRETARIAT'S REPORT

1 ECONOMIC ENVIRONMENT

1.4.2.1 Tax reform

Page 22, paragraph 1.16 (VAT)

The report mentions that possibly in 2013 Viet Nam foresees to review the 2008 VAT Law. EU enterprises encounter several problems in case they are entitled to have a VAT refund at the end of a financial year.

EU question 1: the EU would welcome to receive more details on how the VAT refund system work at present. Furthermore, we would like to ask Vietnamese authorities which are the main elements that will be amended by the on-going review process.

ANSWER: The Law amending the 2008 Law on Value Added Tax was passed in June 2013, and will take effect in 2014. The provisions on cases of VAT refund was amended as follows:

When the input VAT of a business establishment that uses the deduction method is not completely deducted in the month or in the quarter, it shall be deducted in the next period; if the input VAT is not completely deducted after at least 12 months or 4 quarters from the month or the quarter in which the un-deducted VAT arises, the business establishment shall receive a tax refund (the 2008 Law on Value Added Tax provides for the timeframe is three continuous months or more).

When a business establishment that uses the deduction method has a new project of investment, the VAT on goods and services purchased during the investment is not deducted, and the remaining tax is 300 million VND or higher, the establishment shall receive a tax refund (the 2008 Law on Value Added Tax provides for the remaining tax is two hundred millions or higher).

When the un-deducted VAT on exported goods and services of a business establishment reaches 300 million VND in the month or the quarter, the establishment shall receive a VAT refund by the month or quarter (the 2008 Law on Value Added Tax provides for the un-deducted tax is two hundred millions or higher).

These amendments are to reduce the work load for both tax payers and tax authorities, and in line with international practice. The amendments are applied to all businesses without discrimination between domestic and foreign businesses.

VAT tax refund is conducted at tax agencies in accordance with the Law on VAT and its implementing documents.

1.4.2.4 Corporate governance and anti-corruption action

Page 24, paragraphs 1.19 and 1.20 (to be read jointly with paragraph 3.142, page 82)

EU question 2: Referring to 1.4.2.4. (corporate governance) and 3.142 (Vinashin), can Viet Nam clarify what concrete steps are being taken to improve corporate governance, including supervision, monitoring, accountability and legal responsibility of SOEs?

EU question 3: Referring to 1.4.2.4. (transparency) can Viet Nam clarify what concrete steps are being taken to improve the transparency over the corporate and organisation structures, functions, financial performance and possible privileges and immunities of SOEs?

ANSWER: Viet Nam has adopted the Master Plan on improving corporate governance in conformity with the practice of market economy (attached to Decision No. 704/QĐ-TTg dated 11th June, 2012). It is aimed to perfecting the socialist- oriented market economy, enabling the

businesses to actively follow the market economic mechanism, promoting development and improving the efficiency and competitiveness of the business sector in Vietnam.

Also, the Law on Enterprise is being revised in the way of continuing improvement of corporate governance, including supervision, monitoring, accountability and legal responsibility of SOEs.

1.4.2.5 Labour market policies

Page 25, paragraph 1.21

According to the report, in 2008, Viet Nam abolished caps on the number of foreign workers that foreign-invested enterprises may hire and introduced procedures for obtaining work permits for these employees. Nonetheless, Decree No 46/2011/ND-CP of 17 June 2011 introduced additional conditions for contracting foreigners, even at executive or specialized level. This Decree and Circular 32/2011/TT-BLDTBXH of 3 November 2011 require, in particular: i) consular-legalization of foreign workers' degree/certificates; ii) apprenticeship contract signed between employer and Vietnamese employee(s) who will work in the post currently advertised for the occupation of a foreign worker.

EU questions 4 and 5: Could Viet Nam explain why these new requirements are needed for a work permit to be granted to foreign worker? Then, two years after the entry into force of the above-mentioned Decree, is there any evaluation of the consequences of this Decree on the technical level of foreign companies which have invested in Vietnam?

ANSWER: Pursuant to the Law on the Promulgation of Legal Normative Documents, the overall assessment to Decree No.46/2011/ND-CP was conducted. At present, Decree No.46 has been replaced by Decree No.102/2013/ND-CP of September 6 2013, which is fully in line with Viet Nam's commitments in the WTO.

2 TRADE POLICY REGIME/ FRAMEWORK AND OBJECTIVES

2.3 Trade Agreements and Arrangements

2.3.1 WTO

Page 34, paragraph 2.17 (also page 65, paragraph 3.77)

The report states that "Notable gaps exist for agricultural and industrial subsidies, where Viet Nam has yet to submit data on support provided since 2007 pursuant to its obligations under the Agreement on Agriculture and Article 25 of the Agreement on Subsidies and Countervailing Measures. Moreover, despite the importance of the public sector in its economy, Viet Nam has not provided updated information or notifications pertaining to state trading."

EU questions 6 and 7: Could Viet Nam provide information regarding the steps taken or envisaged by Viet Nam to fulfil its obligations to submit data on its subsidies and state trading enterprises? Could Viet Nam provide an overview over the subsidy/support/grant/ incentive schemes that Viet Nam has for its industrial production and services sectors?

ANSWER: Viet Nam affirms its full compliance with notification obligation of the WTO. However, due to capacity constraint, Viet Nam has not notified all the measures affecting trade as required by WTO Agreements. Viet Nam is now drafting a number of notifications on subsidy for the post 2007 period, state trading etc. and shall notify them to the WTO at the soonest time.

2.3.2 Association of Southeast Asian Nations (ASEAN)

Page 37, paragraph 2.25:

The list of reservations in the Asean Comprehensive Investment Agreement (ACIA) is to be gradually eliminated to the minimum level by 2015.

EU question 8: what are the reservations that will constitute the minimum level for Viet Nam to remain in place after 2015?

ANSWER: ASEAN is in the process of negotiating this commitment.

2.4 Investment regime

Page 39, paragraphs 2.33-35

EU question 9: Does Viet Nam envisage eliminating horizontal and/or sectoral restrictions on FDI spelled out in the Enterprise Law?

EU question 10: Does Viet Nam envisage to streamline the investment registration and evaluation procedures across all relevant authorities to have the same interpretation and implementation of the procedures and regulations and to eliminate discrimination between foreign and domestic investors?

ANSWER:

Licensing authorities

The authorities who are authorized to issue investment certificate to Vietnamese and foreign-owned companies include (i) provincial People's Committees and Management Boards of industrial and export processing zones.

Licensing procedure

Depending on the size and the sector of investment, different licensing and registration procedures will be applied:

- i) Investment registration; or
- ii) Investment evaluation

Foreign investors investing in Viet Nam for the first time must have an investment project and carry out either registration or evaluation procedures, in order for an investment certificate to be issued.

Investment registration

Foreign investment projects with a total invested capital of less than VND300 billion (approximately USD15 million) not falling in a conditional sector are subject to "investment registration" and foreign investors of such projects must carry out the procedures for investment registration in order to be granted an investment certificate. The investment certificate also serves as the business registration of the corporate entity.

Domestic investment projects with a total invested capital from VND15 billion to less than VND 300 billion are also subject to "investment registration". Subject to a request of the local investor, the Licensing Authority will issue an investment certificate to such investor.

Enterprises can subsequently register additional investment projects without the need to create a separate entity.

The procedure for "investment registration" is set out in Decree 108/2006/ND-CP. Accordingly, the investor must submit application documents for investment registration to the Licensing Authority. The Licensing Authority shall check the documents and issue the investment certificate to the investors within 15 working days of receiving the valid application.

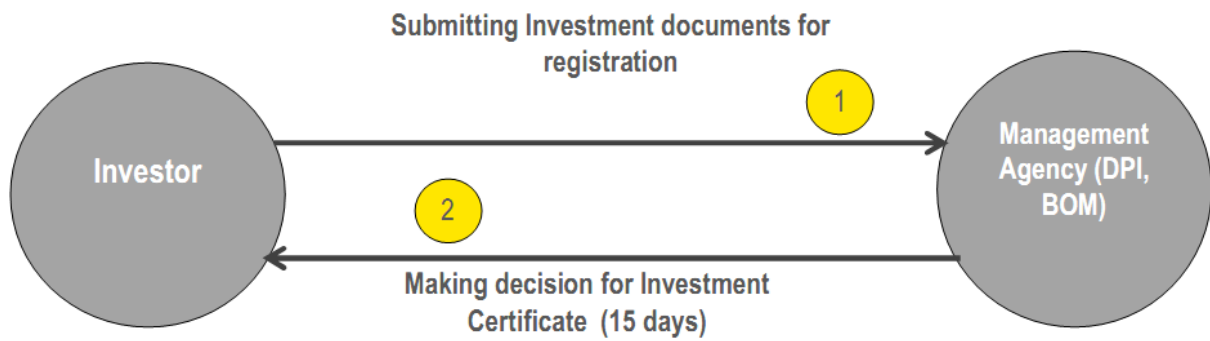


Chart 1: Investment Registration Procedures

Evaluation procedures

Any investment project with a total invested capital of VND300 billion (approximately USD15 million) or more or investment projects falling in conditional sectors must undergo "an investment evaluation" by the Licensing Authority and other relevant authorities. There are two different types of evaluation:

- i) Evaluation for investment projects regardless of total invested capital falling into conditional sectors; and
- ii) Evaluation for investment projects with total invested capital of VND300 billion or more that do not fall into conditional sectors.

1. For the evaluation of investment projects with total invested capital of VND 300 billion or more, along with the application documents, the applicant must also submit an "economic-technical explanation" of the investment project to the Licensing Authority. This covers the economic-technical explanatory statement, objectives, scale, location, investment capital, implementation schedule, land use needs, and technological and environmental solutions of the investment project.

2. For the evaluation of investment projects falling in conditional sectors, in addition to the application documents, the investor must also demonstrate compliance with requirements specific to that conditional sector.

When assessing the application documents, the Licensing Authority may liaise with other relevant Ministries and authorities in evaluating the proposed investment project. Items to be evaluated shall comprise:

- i) Compliance with master planning/zoning for technical infrastructure, master planning/zoning for land use, master planning for construction, master planning for utilization of minerals and other natural resources;
- ii) Land use requirements;
- iii) Project implementation schedule;
- iv) Environmental solutions.

The Law on Investment stipulates that the time-limit for evaluation of investment shall not exceed thirty (30) days from the date of receipt of a complete and valid file. In necessary cases, the above time-limit may be extended, but not beyond forty five (45) days.

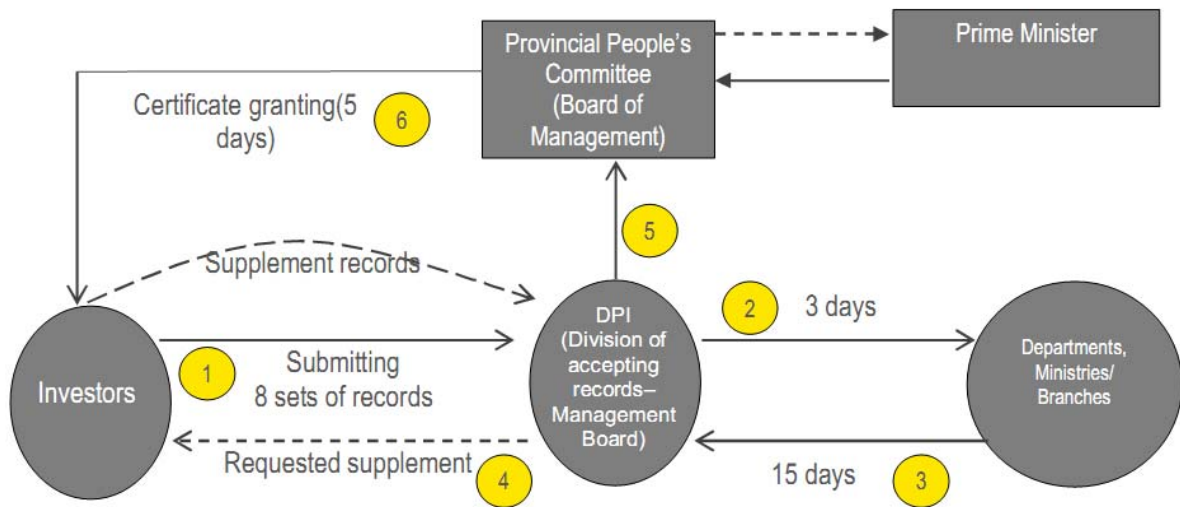


Chart 2: Investment Evaluation Procedures

Application dossier

In general, the following documents are required for the establishment of a 100% foreign-invested enterprises⁵:

- i) Request for the issuance of an investment certificate in the prescribed form
- ii) A draft charter of the company to be established
- iii) A list of investors in the prescribed format
- iv) A report of the financial capability of the investors
- v) An economic and technical explanation of the project "Feasibility Study"
- vi) An explanation of how the conditions will be satisfied
- vii) The investor's Certificate of Incorporation

Page 40, paragraph 2.37

EU question 11: When does Viet Nam envisage establishing a one-stop shop to deal with FDI?

ANSWER: Investment procedure reform is one of the key solutions that the Government of Viet Nam is focusing on. At present, investment licensing authority is fully decentralised to provincial People's committees and Management Boards of industrial and export processing zones. A one-stop shop system has already been established in these above-mentioned government authorities to facilitate the process of implementing foreign investment procedures.

Moreover, the Government has instructed relevant ministries and line ministries to take overall review of the legal system, especially regulations on business and investment procedures so as to ensure and improve the consolidation and feasibility of legal framework, and facilitate the consistent application among ministries, line ministries and local authorities.

⁵ Detailed guidance on application dossier is available in Decree 108/2006/ND-CP dated 22/9/2006.

3 TRADE POLICIES AND PRACTICES BY MEASURE

3.1 Introduction

Page 42, paragraph 3.3

As a result of the OECD's evaluation of Project 30, it recommends that Viet Nam includes the obligation to present impact assessments for new legislation, mandatory consultation with stakeholders, the development of one-stop shops, and pilot projects to test new regulatory models.

EU question 12: what is Viet Nam's response and future direction on these recommendations?

ANSWER: The obligation to present impact assessments for new legislation, mandatory consultation with stakeholders is regulated in the Law on Promulgation of legal documents, Decree 24/2009/ND-CP dated 5/3/2009 Detailing and providing measures for the implementation of the Law on Promulgation of Legal Documents and Decree 63/2010/ND-CP on administrative procedures.

This obligation is compulsory and lead drafting agencies/organizations have to take during drafting process.

The OECD's recommendations are very useful for Vietnam. Based on these recommendations, Viet Nam shall continue implement impact assessments for new legislation, mandatory consultation with stakeholders in order to effectively perform administrative procedure reform and to test new regulatory models as well.

3.2.1 Import procedures and requirements

Page 43, paragraph 3.10

Although full trading rights were granted from 1 January 2009 to foreigner traders importing pharmaceuticals, there are no regulations setting out import formalities with each case being dealt individually creating uncertainty and delay. The Ministry of Health (MoH) had indicated that it would issue specific guidelines on the import of pharmaceutical products. We understand the MoH is close to publishing the guidelines and hope that they will facilitate the import of pharmaceutical products by foreign companies and not impede it by imposing pre-conditions.

EU question 13: Could Viet Nam clarify when specific guidelines on the import of pharmaceutical products will be issued?

ANSWER: The Ministry of Health (MOH) is finalizing the draft Circular providing the implementation of export, import rights by FDI enterprises in the field of pharmaceuticals in Vietnam. The MOH has been being in close collaboration with relevant ministries such as MOIT, MPI, MOJ etc in order to elaborate this draft Circular since 2008. The draft Circular has been circulated for broadly taking comments and opinions from relevant stake holders, including foreign enterprises, and would be enacted in the coming time.

Page 43, paragraph 3.11

According to the report, the chemical sector is not listed as 'restricted sector'. Chemical products are neither listed among the products requiring an import licensing according to the "Notification under Art. 7.3 of the Agreement of Import Licensing Procedures" submitted by Viet Nam in 2011 (G/LIC/N/3/VNM/1). Nevertheless, EU companies that want to distribute and to sell their imported chemicals directly in Viet Nam are encountering several problems and are requested to apply for licenses.

EU questions 14 and 15: Could Viet Nam clarify whether for the distribution and the sale of chemical products a license is necessary? In this case, could Viet Nam clarify where to find all the relevant information for applying for that license and which is the Ministry of competence?

ANSWER: With respect to pharmaceuticals: According to Viet Nam's commitment when accessing to the WTO, foreign enterprises are granted export, import trading rights for medicines in Viet Nam. Viet Nam has not committed market access to medicines distribution service.

3.2.6 Internal Taxes

Page 50, paragraph 3.31

Reference is made to Special Consumption Tax, applying to spirits (20% vol +) and beer at the high rate of 50% (increased from 45% in January 2013 and levied, in the case of imports, on the customs duty paid value – see above). Other alcoholic drink products not exceeding 20% vol pay only 20%.

EU question 16: Will Viet Nam review the Special Consumption Tax and consider replacing its ad valorem basis with a specific one so that, in line with international best practice, alcoholic drinks are taxed in accordance with their alcohol content (e.g. x units of currency per litre of pure alcohol)?

ANSWER: Viet Nam has no plan to review special consumption tax policy on regulating "absolute tax per liter of pure alcohol" because regulations of special consumption tax for wine, beer is in conformity with international practices and WTO commitments.

3.2.7 Import prohibitions, restrictions, and licensing

Page 54, Table 3.7

Page 56, paragraph 3.42

According to the report, except for the Circulars pertaining to automatic licenses, no changes have occurred to Viet Nam's import licensing regime since its accession to the WTO. However, the Decree 94/2012/ND-CP adopted last year and concerning wines and spirits (production and) trading seems to limit the importation rights to distribution licence holders and impose a quota on the number of licences for each category based on population. These arrangements appear to contain restrictions that are not applicable to local producers.

EU questions 17 to 21: Could Viet Nam clarify what exactly Decree 94/2012/ND-CP modifies comparing to the provisions contained in the previous Decree 40/2008 as regards importing alcohol?

In particular, could Viet Nam clarify whether, according to Decree 94/2012, the wholesalers are still allowed to import the products? Could Viet Nam explain in detail which the procedures applicable are?

As the Decree establishes a quantitative quota for licenses, could Viet Nam explain the rationale behind this decision? Furthermore, could Vietnamese authorities demonstrate that this measure would not have a trade-restrictive or distortive effect on imports?

ANSWER: Decree No. 94/2012/ND-CP November 12, 2012 of the Government on manufacturing, liquor business has provided for organizations and individuals involved in business with products liquor licenses instead of 03 change compared with the Decree No. 40/2008/ND-CP April 7, 2008 of the Government on manufacturing, liquor business, including:

- Distribution Licensing of liquor products;
- Wholesale Licensing liquor products;
- Retail Licensing liquor products.

In paragraph 4 of Article 20 of Decree 94/2012/ND-CP stipulates: Only enterprises with business license distributing products imported wine and spirits directly responsible for the quality, safety food imported wine.

According to Clause 1 of Article 7 of Decree No. 59/2006/ND-CP of June 12, 2006 of Government regulations state that alcohol is limited trading commodities, commodity trading activities, services on the list of goods and services subject to business restriction must meet the conditions of the scope, scale, time, place of business, the number of participating merchants trading goods and services limited business to suit particular requirements management and business network development planning of goods and services in each period;

Above regulations do not restrict trade and import that create the conditions for foreigners and importers operating in Viet Nam market can produce manage, product and science distribution system organisation, effectively helping Vietnamese consumers are using alcohol products imported genuine, quality assurance.

Page 57, paragraph 3.44

EU question 22: Could Viet Nam please provide a definition for "non-essential" imported items and explain why it considers it necessary to regulate consumption of such items?

ANSWER: List of "non-essential" imported commodities and consumer goods not encouraged for import issued by the Ministry of Industry and Trade of Viet Nam is a reference document for relevant ministries and agencies to develop policies consistent with WTO, such as increase or decrease in MFN tax in line with the international commitments of Vietnam; application of technical measures to trade in line with TBT Agreement in WTO.... This Decision of the Ministry of Industry and Trade of Viet Nam is not a legal and mandatory document.

The issuance of this Decision is completely not intended to restrict the provision of foreign currency loans to finance imports of the listed items. Current regulations do not allow the Government or the State Bank of Viet Nam to get involved in business activities of commercial banks and credit institutions. Commercial banks and credit institutions in Viet Nam have the right to decide, in accordance with current legislation, which enterprises to provide foreign currency loans to import goods (without any discrimination between essential and non-essential goods). Therefore, this decision does not restrict imports and does not breach WTO rules.

3.2.8 Custom valuation

Page 57, paragraph 3.47

According to the report, in 2011, the General Department of Customs issued an official letter identifying reference prices for selected imported goods by trading partner. The product list initially covered 13 categories, but was expanded to 20 categories in May 2011. Circular 3286/TCHQ-TXNK of 14/07/2013 expands again the number of items under "reference prices". The new reference prices in some cases such as ceramic tiles are 400% higher than market prices.

EU question 23: What is the basis to establish these high reference prices by Customs?

ANSWER: Product to be included in the database is not selected based on trading partner criterion.

Major source of information for constructing the database is the price declared by importers who are importing the identical or like products. In addition to that, the database also relies on other publicly available information on prices.

EU question 24: In case of discrepancies between the reference price and the transaction price, could Viet Nam explain the objective reasons why the invoice price is rejected?

ANSWER: Reference price is to evaluate risks and detect potential duties fraudulent evasion of those importers that is attempting fraudulent customs value declaration. Therefore, it is rational

that the invoice price in such cases (value shown on the invoice is not right) not automatically accepted is reasonable.

Furthermore, this paragraph refers to past problematic use by Viet Nam of minimum import prices for customs valuation purposes and its commitment not to do so post accession. It goes on to state that a valuation database has been established as a risk assessment tool and that this seems to amount to a minimum reference price system in all but name for the goods concerned, which are said to include wine and beer. However, European businesses continue to have problems in this area and seek Viet Nam's adherence to its WTO accession commitments.

EU question 25: Will Viet Nam consider removing its reference price list and aligning its customs valuation approach with international best practice as laid out in the WTO Agreement on Customs Valuation?

ANSWER: The reference price is not the minimum price mechanism and not used for imposing on customs value but risk evaluation and detection of duties fraudulent evasion. This tool is allowed under the Customs Valuation Agreement. Specifically, as defined in Article 17 "there is no provision of this Agreement shall be construed as limiting or questioning of the right of the customs authorities in the implementation of measures to ensure the truthfulness or accuracy of any statement, any documents or any declaration given for customs value determination".

The Reference Prices is not used for determining the price or imposing a custom value of goods and it's not the minimum price. In practice, Viet Nam follows strictly 6 methods provided for under Article VII of the GATT and the Agreement on Customs Valuation.

EU question 26 and 27: Could Viet Nam confirm that products can be imported into Viet Nam below values listed in this "reference price list"? If this is to be confirmed, can Viet Nam explain what is the procedure followed and what happens when a product is imported below the reference price?

ANSWER: The reference price is a risk assessment instrument. In the case that price of imported goods is lower than reference price, the importers can make consultation with customs office to clarify the reasons.

3.2.10 Anti-dumping, countervailing duty, and safeguard regime

Page 60, paragraph 3.56

The paragraph refers to the types of final safeguard measures, listing different options and also adding "any other measure decided by the Government".

EU question 28: Could Viet Nam explain what type of measures is the last point referring to?

ANSWER: Other measures referred in the last point are any kinds of measures other than those mentioned above which are suitable to be applied on a case-by-case basis. According to Article 5 on the WTO Agreement on Safeguards, Members can choose most suitable measures, to the extent necessary, to prevent or remedy serious injury and to facilitate adjustment.

Up to now, there have not been any safeguard investigations initiated by Viet Nam leading to the application of such kinds of measures referred in the last point.

3.3 Measures Directly Affecting Exports

3.3.1 Export procedures and requirements

Page 60, paragraphs 3.61-3.62, 3.63

EU questions 29 to 31: Could Viet Nam please outline what permits and authorizations a company requires to obtain in order to be able to export tobacco and alcohol products from Vietnam, and what requirements a producer must fulfil in order to manufacture and export tobacco and alcohol products? Also, what declarations or permits are required for exporters in order to export tobacco

and alcohol products from Vietnam? Which Vietnamese authority is responsible to issue such permits? Are the records of exports available for inspection?

ANSWER: Cigarette: According to Article 30, Decree 67/2013/NĐ-CP of 27 June 2013 providing details in implementation of the Law on preventing cigarette harms and on cigarette business:

"3. Exports of cigarette must follow these principles:

a) Traders having License to produce cigarette products or License to distribute cigarette products or License to trade on cigarette products are allowed to export cigarette products with legitimate origin in compliance to this Decree and other related rules.

In the case the trader is authorized to export cigarette products with legitimate origin by traders having License to produce cigarette products or License to distribute cigarette products or License to trade on cigarette products, the authorized trader must have either of the three mentioned licenses.

b) For traders having License to produce cigarette products the export cigarette products volume will not be counted in the volume of cigarette products domestically consumed.

Liquor: This is a normal goods that requires no license or conditions to be exported.

EU questions 32 to 34: Could Viet Nam please inform the Members how it monitors shipments entering and exiting its port facilities, including exports and re-exports? Do Viet Nam's authorities maintain specific trade statistics for each type of operation for the different ports? If yes, how can one consult such statistics?

ANSWER: Every shipment will be updated into Custom Database System. Therefore, the requirement for trade statistics should be consulted on the website of Viet Nam's Customs.

3.3.3 Export restrictions

Page 63, paragraph 3.68

According to the report, Viet Nam applies licensing of mineral licensing to exports and the legal basis is Circular 41/2012/TT-BCT of December 2012, while Circular 4/2012/TT-BXD establishes the ban on certain minerals.

EU questions 35 and 36: Could Viet Nam please clarify in details which are the conditions set by the above-mentioned circular for mineral export? Could Viet Nam clarify which are the conditions set by Circular 4/2012/TT-BXD banning exports of eight minerals?

ANSWER: Viet Nam's implementation of mineral export regulations is completely in line with its WTO commitments.

3.4.2 Standards, Technical requirements, and conformity assessment

3.4.2.1 Technical barriers to trade

Page 66, paragraph 3.86

The Secretariat Report indicates that, since its accession to the WTO, Viet Nam has submitted 33 TBT notifications. Although the EU acknowledges and appreciates the improvements in Viet Nam's compliance with transparency obligations under the TBT Agreement, there are still cases where mandatory technical regulations or conformity assessment procedures are not notified to the WTO, or are notified after adoption.

EU question 37: Could Viet Nam describe what steps it is taking to address this issue?

ANSWER: We would be grateful if EU can clarify which mandatory technical regulations have not been notified to the WTO.

Page 70, paragraph 3.100

Reference is made to the Law on Products and Goods Quality of 2007, which separates products into two categories ("capable of causing unsafety" or not). The former category is subject to mandatory inspections, inter alia.

EU questions 38 and 39: Could Viet Nam provide further information as to how, and on the basis of which criteria are products classified as 'capable of causing unsafety'? For example, are Vietnamese authorities carrying out a risk assessment before including a product in this category?

ANSWER: When drafting the Law on Products and Goods Quality and the implementing Decree, we made reference to some Laws/Acts on product safety of Denmark, Sweden, Latvia, Finland, the U.S., Korea, etc. This Decree guides the products' and goods' possibilities of causing unsafety, which shall be determined basing on the following factors:

- a. Chemical, physical or biological nature;
- b. Structure and operation principles;
- c. Process of transportation, storage, preservation and use.

When selecting the products possibilities of causing unsafety for management, such products , for example electrical and electronic equipment, must undergo risk assessment.

3.4.2.2 Sanitary and Photosanitary Measures**Page 72, paragraph 3.102**

Viet Nam's Food Safety Law 2010 requires national registration for all the three food products categories as defined by the Law. Currently an European enterprise has to submit at least three registrations to the three distinct Vietnamese authorities and update the relevant registrations whenever there are new exporting companies to the approval lists. Implementing guidance has been issued for agricultural products under the administration of the Ministry of Agriculture and Rural Development, however, there are not yet for those that are managed by the other two ministries (of Industry and Trade; and of Health).

EU question 40: We recognise Viet Nam's intention to enhance food safety; however, we would like to enquire whether there are any plans to streamline the procedures where possible to avoid unnecessary costs on both Vietnamese authorities and exporting countries.

ANSWER: Currently, Viet Nam's laws and regulations on the issue are in line with international practices. In addition, Vietnamese Government has been doing the public administrative reform to facilitate the activities of governmental agencies and business operators.

Page 74, table 3.12

According to Table 3.12, under "Environmental protection", Decree No. 80/2006/ND-CP has amended implements several articles including strategic environmental assessment (SEA) and environmental impact assessment (EIA).

EU questions 41 and 42: Could Viet Nam explain to what extent SEA and EIA legislation covers the same areas and follows similar procedures as in the EU? Could Viet Nam indicate whether EIA is commonly applied or applied in a selective manner?

ANSWER: In order to implement regulations on SEA, EIA under the Law on Environmental Protection 2005, the Government of Viet Nam issued Decree No. 29/2011-ND-CP dated 18 April 2011 on SEA, EIA replacing the Decree No. 80/2006/ND-CP). This Decree regulates specific list of strategies and planning which are subject to SEA implementation (sectoral strategies, planning or fields having significant impacts on the environment). Procedures for SEA implementation stipulated in the current laws and technical guidelines are basically similar to those of EU.

Decree 29/2011-ND-CP also regulates specific list of types of project which are subjects to EIA, in which large scale projects having significant impacts on the environment must conduct EIA at a detailed level; small scale projects having little impact on the environment need to conduct EIA but in a simple manner, also called "Environment Protection Commitment".

3.4.2.2 Sanitary and Phytosanitary Measures

Page 72, paragraph 3.102

The report makes reference to Viet Nam's import ban in place since July 2010. Recently, Viet Nam announced the lifting of the remaining ban on offal starting from 1 September 2013.

EU question 43: Could Viet Nam indicate when it will notify the lifting of this ban together with the new import conditions for offal imports via a WTO SPS notification, to allow comments from trading partners?

The EU noted that Vietnam, together with the lifting of the ban, imposes several new conditions to the imports of white offal, such as: a limitation to use only three ports of entry into Viet Nam and additional registration and certification requirements (reference legislation of MARD: 2408/BNN-TY).

EU questions 44 to 46: Could Viet Nam provide its standard health certificate (applicable for all trading partners), to be used for imports of offal and provide a detailed clarification on how the conditions imposed are in line with international standards? For those conditions where the international standards are not followed, Viet Nam is requested to provide its risk assessment based on science. In addition, could Viet Nam confirm that it applies no stricter health requirements for imports of offal as implemented on its domestic production? Could Viet Nam inform when and where it will publish the detailed new import conditions to be followed for offal together with an indication of the standard processing period of the procedure to be followed?

ANSWER FOR QUESTIONS 43-46: The halting of offal importation in 2010 in responding to public pressure after Vietnamese competent authorities detected several consignments that violated Viet Nam's regulations on food safety. The temporary stop aimed at reviewing risk management, strengthening monitoring system and capacity of Viet Nam authorities. Sanitary and Phytosanitary Measures applies to offal shall following Circular 25/2010/TT-BNNPTNT that had been notified to WTO in Notification G/SPS/N/VNM/20 dated 30 June 2010. Viet Nam, therefore, does not intend to notify this. However, to ensure the transparency, Ministry of Agriculture and Rural Development had sent a Verbal Note to inform all Diplomatic Missions in Viet Nam about the re-open decision.

The decision to resume importation in 3 ports is based on statistics and to ensure the benefit of enterprises. In accordance with sample taking regulations, consignments have to be opened for inspection; therefore, appropriate facilities should be in place to preserve quality. After reviewing infrastructure, there are 3 major ports of Hai Phong, Da Nang and Ho Chi Minh City could meet the requirements. In addition, importation statistic shows that importation of the products mainly goes through those 3 ports.

The EU noted that with the new import conditions, only three entry-points are allowed for imports of white offal.

EU question 47: Could Viet Nam explain how this measure is in line with WTO rules?

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Page 74, paragraph 3.107

The report states that in 2007 animal health standards generally observed the standards set out in the OIE Terrestrial Animal Health Code and Aquatic Animal Health Code. However, with MARD Decision 33 dated 24 February 1998 (confirmed by Vietnamese authorities to be still in force to date), a number of countries, including EU Member States, are forbidden to submit bovine products to Viet Nam for reasons of Bovine Spongiform Encephalopathy (BSE). This measure seems to be not in line with the international standard of OIE.

EU questions 48 and 49: Could Viet Nam demonstrate how this measure is in line with the international standard of OIE? Could Viet Nam clarify whether there are any plans for lifting the ban for the countries mentioned in the MARD Decision?

ANSWER: Viet Nam will review and amend the measure based on recommendations from OIE.

Pages 74-75, paragraph 3.109

The report states that a comprehensive list of actions is to be undertaken by different state agencies to meet the objectives of the national food safety strategy.

EU question 50: Could Viet Nam provide a detailed overview, together with timelines, on further actions that will be taken to guarantee a coordinated approach by all departments involved in the implementation of the food safety strategy, in particular with a view to have transparent and clear consistent import conditions?

ANSWER: Since 2007, Viet Nam has fully implemented the notification obligations regarding SPS and TBT.

On SPS, Prime Minister had issued Decision 99/2005/QĐ-TTg dated 9 May 2005 to establish Viet Nam National Notification Authority and Enquiry Point to fulfil notification obligation in WTO/SPS Agreement. Network has formed between relevant Ministries to ensure the implementation. Ministry of Agriculture and Rural Development as coordinating roles of the network had issued Decision 1733/QĐ-BNN-TCCB dated 17 July 2005 and Decision 04/2008/QĐ-BNN dated 10 January 2008 on organization structure, functions and coordination mechanism of National Notification Authority and the networks in relevant Ministries. In accordance with the regulation, i.e. Article 7 of Decision 04/2008/QĐ-BNN, it requires drafting agency, as soon as the available of final draft, to provide at least 70 days to notify to WTO and reasonable period to response to comments from WTO Members.

EU question 51: Could Viet Nam provide also an overview on the actions intended to be taken to further improve communication with trading partners to ensure that import rules/procedures are transparent, providing for a clear standard processing period of each procedure and guaranteeing that this is harmonised and consistent between the different Vietnamese departments involved in food safety?

ANSWER: All issued documents and draft documents are made publicly available at the website of the state authorities. In the process of drafting legal documents, the drafting authority shall consult with all relating authorities or organizations who are the members of the drafting committee. Besides, the Government of Viet Nam authorizes the Ministry of Justice to supervise and guarantee the harmonization and consistent between the legal documents and the international commitments

3.4.2.2.1 Quarantine

Page 76, paragraph 3.114

The report states that an import plant quarantine permit is required together with a phytosanitary certificate for objects subject to pest-risk analysis.

EU question 52: Could Viet Nam explain why in addition to the phytosanitary certificate it requires an import plant quarantine permit?

ANSWER: Import plant quarantine permits are not applied to all consignment. Only subjects that are regulated in Article 2, 3 Circular 39/2012/TT-BNNPTNT will have to obtain import plant quarantine permits.

3.4.3 Trade-related investment measures

Page 77, paragraph 3.117-3.118

The term "foreign-invested company" is not clearly defined in any Vietnamese legal and guiding documents. The strictest interpretation of the term would mean that any company with even a smallest percentage of foreign share (e.g. 1%) is regarded a foreign invested company. This lack of clarity has put treatment of foreign invested companies under significant discretion of local authorities and affects the company's operations and business plans in Vietnam. For instance, a foreign invested company may be disapproved of acquiring a local pharmaceutical distribution firm because distribution of pharmaceutical distribution is not extended to foreign firms. Likewise, a local retail company now with some foreign ownership will be subject to the Economic Needs Test requirement for any new outlets. The Decree 102/2010/ND-CP attempted to address the issue by making 49% foreign ownership a threshold, however in practice it is posing more questions than answers to foreign investors.

EU question 53: We understand that the Vietnamese Law on Investment is currently under review, we would like an update on this process and welcome a clear definition of foreign invested companies and consistent interpretation in relevant laws.

ANSWER: The amended Law on Investment will be submitted to the National Assembly in 2014. One of the key contents of this draft law is to provide clear definition of the term "foreign – invested company".

3.4.4 Free zones and special economic areas

Page 77, paragraph 3.119

EU questions 54 and 55: Could Viet Nam confirm that goods trans-shipped through its ports are also subject to IP protection rules and that the relevant authorities have the power to seize goods in Free Trade Zones (FTZs) which infringe trade mark or copyright legislation? Are goods trans-shipped through FTZs also subject to international disciplines agreed to by Vietnam?

ANSWER: We will provide the response at the soonest time.

3.4.6 Government procurement

Page 78, paragraph 3.127

This paragraph describes the legal provisions governing the government procurement in Vietnam. It is known that Viet Nam is currently reviewing its law on government procurement.

EU question 56: Could Viet Nam clarify which reforms are envisaged, if any, to resolve the price penalisation during the evaluation of the offers originating in non G-7 countries?

ANSWER: The Government has already submitted the Law on Public Procurement (revised) to the National Assembly for consideration. The Law's amendment is aimed to encourage and create favourable and transparent environment to attract private investment into infrastructure development on the basis of competitiveness and efficiency enhancement; to increase transparency and openness in tendering activities using State capital.

Page 79, paragraph 3.128

EU questions 57 to 59: What is the importance of limited bidding in terms of percentage with regard to the overall procurement carried out by the Vietnamese contracting authorities? Does Viet Nam's procurement legislation lays down rules for the use of electronic procurement? If yes, could Viet Nam provide details on this matter?

ANSWER: The draft Law on Procurement (revised) provides regulations on e-procurement for transparency and simplification of tendering procedures, and full compliance with international commitments on the high determination in corruption prevention and efficiency improvement in tendering activities.

Page 79, paragraph 3.129

EU questions 60 to 62: What is the importance, in terms of percentage and value, of tenders won by foreign bidders and what is the origin of these foreign tenderers? Does Viet Nam consider removing or limiting the scope of preferential treatment for bids including local content or for established companies? Does Viet Nam consider extending the scope of international tendering?

ANSWER: We do not calculate the percentage and value of tenders won by foreign bidders, as well as their origin. Tenders are evaluated against criteria such as technical and financial capacity, and experience.

The Law on Procurement is under consideration for amending certain provisions to further encourage and create favorable and transparent environment to attract investment from organizations and individuals of all economic sectors, including foreign investors and bidders, into infrastructure development projects.

3.4.7 State trading, state-owned enterprises and privatization/equitization

Page 81, paragraph 3.139 (to be read together with 1.4.22 Privatization (paragraph 1.17))

It is stated in 1.4.22. (1.17) that "the state sector remains relatively large, accounting for 33% of GDP in 2011 (35.9% in 2007) (Table 1.5). While it has become smaller, the trend towards "equitization", divestment, mergers, acquisitions, and liquidation, was reversed in 2009 and 128 new wholly state-owned enterprises were added, a pattern that persisted during 2010 and 2011." It is further stated in 3.4.7 (3.139) that "State-owned enterprises currently account for approximately 38% of Viet Nam's GDP, only slightly less than in 2004 or 2005" but in footnote 120 that "adding subsidiaries of SOEs and private enterprises controlled by top government officials, the State sector may account for as much as 70% of Viet Nam's GDP".

EU question 63: In view of this, how will Viet Nam ensure that its trading partners are able to compete fully with SOEs on equal footing and on a level playing field in Viet Nam and also in markets outside Vietnam?

ANSWER: Viet Nam has fully complied with commitments on operation of state-owned enterprises. Accordingly, all enterprises that are State-owned or State-controlled, including equitized enterprises in which the State has control, and enterprises with special or exclusive privileges, make purchases, not for governmental use, and sales in international trade, based solely on commercial considerations, e.g., price, quality, marketability, and availability. The enterprises of other WTO Members have an adequate opportunity in accordance with customary business practice to compete for participation in sales to and purchases from these enterprises on non-discriminatory terms and conditions. In addition, the Government of Viet Nam does not influence, directly or indirectly, commercial decisions on the part of enterprises that are

State-owned, State-controlled, or that have special and exclusive privileges, including decisions on the quantity, value or country of origin of any goods purchased or sold, except in a manner consistent with the WTO Agreement and the rights accorded to non-governmental enterprise owners or shareholders.

Viet Nam does not adopt or maintain any measure inconsistent with the above-mentioned commitments.

3.4.7 State trading, state-owned enterprises and privatization/equitization

Page 82, paragraph 3.142 (see also paragraph 22 of the summary)

According to the report, Viet Nam has begun the process of legally separating state ownership rights from the State's regulatory functions.

EU questions 64 and 65: Can Viet Nam clarify what concrete steps have been taken or are envisaged to be taken to achieve this objective? Can Viet Nam clarify in more detail what regulatory functions SOEs have (such as PetroVietNam mentioned in 4.85)?

ANSWER: This process is legalised in Decree No. 99/2012/ND-CP dated 15th November, 2012 by the Government on the assignment of the rights, responsibilities and obligations of the State in state-owned enterprises and state-owned capital investment in enterprises.

3.4.8 Competition policy

Page 83

Art. 10 of the Competition Law lists the cases that can be exempted from the prohibition of agreements restraining competition. One of the conditions foreseen is in case the agreement increases the competitiveness of Vietnamese enterprises in the international market. The same principle seems to exist for merger control (Art. 19).

EU questions 66 and 67: Could Viet Nam elaborate on those provisions and explain the rationale behind them? In particular, how does Viet Nam ensure that the implementation of those provisions would not lead to unfair competition or restrict competition?

The Law on Competition knows several exemptions for small and medium enterprises (SMEs) in the areas of antitrust and merger control. However, the definition of SME is unclear.

EU question 68: Could Viet Nam clarify which are the conditions an enterprise needs to fulfil to qualify as an SME?

ANSWER: From Viet Nam's perspective, the competition policy is not isolated to other economic development policies, including industrial policy and trade policy. Enhancing the competitiveness of Vietnamese enterprises on the international market could be evaluated by, but not limited to, the following situations:

- Producing similar products at lower costs;
- Adapting the production technology with market demands;
- Improving the correlated power of enterprises on the market in various aspects of manufacturing process: reducing production costs, improving products' quality, enhancing workforce skills, management team and so on.

In addition, according to Article 10 of the Competition Law, competition restriction agreements shall be exempted for a definite period with the aim of reducing costs and benefiting the consumers.

The exemptions are assessed on a case-by-case basis. Those cases submitted for exemption which are found potentially leading to the unfair competition or restrict competition under the Competition Law may be rejected or investigated properly.

The definition of small and medium sized enterprises (SMEs) is clearly stipulated in Article 3 of Decree No. 59/2009/ND-CP dated June 30th 2009 of the Government on assistance to the development of SMEs.

Particularly, paragraph 1, Article 3 of the Decree provides that: Small- and medium-sized enterprises are business establishments that have registered their business according to law and are divided into three levels: very small, small and medium according to the sizes of their total capital (equivalent to the total assets identified in an enterprise's accounting balance sheet) or the average annual number of laborers (total capital is the priority criterion), concretely as follows:

Sector	Size				
	Very small enterprises	Small-sized enterprises		Medium-sized enterprises	
	Number of laborers	Total capital	Number of laborers	Total capital	Number of laborers
I. Agriculture, forestry and fishery	10 persons or fewer	VND 20 billion or less	Between over 10 persons and 200 persons	Between over VND 20 billion and VND 100 billion	Between over 200 persons and 300 persons
II. Industry and construction	10 persons or fewer	VND 20 billion or less	Between over 10 persons and 200 persons	Between over VND 20 billion and VND 100 billion	Between over 200 persons and 300 persons
III. Trade and service	10 persons or fewer	VND 10 billion or less	Between over 10 persons and 50 persons	Between over VND 10 billion and VND 50 billion	Between over 50 persons and 100 persons

Depending on the nature and objectives of each assistance policy or program, the sponsoring agencies may concretize the above criteria as appropriate.

3.4.9 Price controls

Pages 84-85

According to the report, the Law on Prices confers quite wide ranging capacities to official authorities regarding price controls. In particular, according to footnote 135 these options do not only exist for the products listed in the Price Law but decisions may also be made at regional or local level.

EU questions 69 and 70: Could Viet Nam clarify which is the role of the State, if any, in controlling the market prices setting of regional or local authorities? Which are the measures undertaken by Viet Nam for avoiding that such measures could affect the opening of markets for foreign businesses?

ANSWER: Principles of price management

- (i) The State performs the price management under the market mechanism with respects for the rights of business organizations and individuals to price and compete on price as provided by law.
- (ii) The State regulates prices in accordance with the Law on Prices in order to valorize prices, protects the rights and legitimate interests of business organizations and individuals and consumers and the interests of the State.
- (iii) The State adopts price policies to support people in low socio-economic status areas and people in exceptionally low socio-economic status areas.
- (iv) The State sets out principles and methods of pricing of goods and services priced by the State in conformity with the principles of market economy.

3.4.10 Trade-related intellectual property regime 3.4.10.1 Overview

3.4.10.1.3 IP authorities

Page 87, paragraph 3.161

With reference to the IP authorities:

EU questions 71 and 72: Is the "principle of non-reliance" applied by the Vietnamese authorities in the context of clinical data protection? If yes, during which period of time? Do Vietnamese authorities allow generic manufactures for [indirect] reliance or reference to clinical data dossiers filed in foreign medicine agencies during the period of data protection in Vietnam?

ANSWER: Answers to be provided later.

3.4.10.2 Intellectual property

Paragraph 3.170 mentions the Law on Intellectual Property. With regard to Articles 84 and 128 of the Law on Intellectual Property on data protection for test data:

EU questions 73 and 74: With reference to the abovementioned articles of the law, could Viet Nam clarify why the subsequent applicants for market authorisation cannot use the data of the original provider, while the relevant Vietnamese authorities can do so? Does this mean that the use of data (without the agreement of the original provider) by the Vietnamese authorities for granting the subsequent marketing authorisation is in line with the Vietnamese Law in force?

ANSWER: Answers to be provided later.

3.4.10.2.2.1 Trade marks

Page 90, paragraph 3.174

EU question 75: Does Viet Nam take measures against bad-faith registration of foreign brands (which are well-known abroad but not in Vietnam)?

ANSWER: Answer to be provided later.

3.4.10.2.2.4 Patents for inventions

Page 91, paragraph 3.178.

EU questions 76 to 78: Do Vietnamese laws allow for patentability of pharmaceutical and chemical products? Can secondary medical use claims be patentable in Viet Nam? Which databases are used by the examiners at NOIP to conduct substantive examination of patent applications?

ANSWER: Vietnamese laws allow for patentability of pharmaceutical and chemical products. Secondary medical use claims cannot be patentable in Viet Nam as they are not products or process.

NOIP conduct substantive examination of patent applications basing on following minimum mandatory information sources:

- All other applications accepted by the National Office of Industrial Property which have an announcement date earlier than the lodging or priority date of the application under consideration;
- Applications for inventions or/and patents which other organizations and countries have announced/granted within twenty five (25) years prior to the lodging or priority date stated in the application and which are archived in the patents database and other sources at the National Office of Industrial Property;

- In necessary and possible cases, reference shall be extended to scientific reports and to reports on the results of research programs and topics and so forth, within the same technical field.

3.4.10.2.3 Enforcement

Page 92, paragraph 3.189

Viet Nam has emphasised its commitment to tackling infringements of intellectual property rights (IPR) by developing a comprehensive set of laws to criminalise and combat such infringements. Viet Nam's commitment on increasing enforcement of IPR in Viet Nam is appreciated and commended. Nonetheless, the issue of IPR infringement in Viet Nam remains one of concern to Members; therefore border measures on goods at least for import and export and both on demand and ex officio are very important.

EU question 79: Does Viet Nam envisage extending the scope of border measures beyond what is currently provided for in the VN law (only imports and on demand actions are provided for) as was recently announced by the VN Deputy DG of Customs Mr. Anh Ngoc Vu at 7th Global Congress on combating Counterfeiting and Piracy in Istanbul on 24-26 April 2013?

ANSWER: Viet Nam commits to implement measures at the border to deal with IPR infringements under the law and regulations of Viet Nam and to comply with the relevant international treaties that Viet Nam is signatory. In case that the protection of IPR is absent from Viet Nam's law and regulations, Viet Nam shall follow the international commitments that Viet Nam is contracting party.

EU questions 80 to 82: Could Viet Nam please indicate the number of criminal cases or prosecutions for IPR infringements that were taken in 2010, 2011 and 2012, respectively? Please indicate what steps Viet Nam has taken to improve its intellectual property enforcement regime since becoming a WTO Member in 2007? In addition, what steps does the Vietnamese government intend to take to increase the enforcement of IPR and speed up court proceedings on IPR infringement cases in Viet Nam in the immediate future?

ANSWER: During 2007-2010, Courts handled 11 cases, judged 8 cases. 02 persons were punished with penalty of non-custodial reform, 02 were sentenced to a suspended sentence, 06 were imprisoned three years or less, and 02 were imprisoned from 3-7 years.

Since becoming a WTO member in 2007, Viet Nam has taken important measures to improve its intellectual property enforcement regime, particularly:

- Upgrade the IPR legal framework by amending a series of legislative documents (IP Law, Criminal Code, guiding decrees, etc);
- Issue the National Action Plan on anti-IPR infringement (the Action Plan 168);
- Increase public awareness of IPRs by organizing workshops, training courses, programs on TV, etc.
- Reform IPR related - administrative procedures.
- Enhance training to improve the professional qualification and skills for authorized staff.

4 TRADE POLICIES BY SECTOR

4.2 Agriculture

4.3.2.1 Trade policies

Page 101, paragraphs 4.22 to 4.27

The report gives an overview of the trade policies in the agricultural sector. The EU would like to receive additional information with reference to the recently adopted Decree 8/2013/TT-BCT of the Ministry of Trade and Industry. According to this decree, foreign direct investors are not allowed to buy agricultural products directly from producers for export.

EU questions 83 and 84: Could Viet Nam submit further details on this decree, clarifying in particular, which is the aim of that provision? Which are the mechanisms to supervise transactions of agricultural commodities between local major traders and foreign buyers?

ANSWER: The export right in Circular No.8 only restricts foreign traders wishing to export from organizing purchasing networks including open store to purchase export goods. They have rights to buy from producers if the producers have business licence or import right or distribution right. The Circular No.8 has expanded the export right for foreign trades that they can export the goods imported legally.

This provision is aiming to support farmers who are vulnerable to market varies. Through Viet Nam purchasing intermediaries, the price of agriculture products may not been controlled or intervened by giant foreign companies

4.3 Fisheries

4.3.1 Features

Page 103, paragraph 4.43

The report mentions that "several factors are driving the rapid increase in aquaculture", in particular, higher incomes is mentioned as the main driving force.

EU question 85: Could Viet Nam list which are the other factors, in particular, could Viet Nam clarify whether there is any specific support from the Government?

ANSWER: Rising oil price in the year 2007, 2008 directly affected the lives of poor coastal fishermen. To help them overcome difficulties at that time, Prime Minister issued Decision 289/QD-TTg promulgating policies to support ethnic minorities, social policy households, poor and near-poor households and fishery households. The main purpose of these policies is to address the intermediate social security for the poor and near poor, including poor coastal fishermen.

Page 105, paragraph 4.46

According to the report, 28,424 are offshore vessels.

EU questions 86 and 87: what are the main species targeted by the offshore vessels? What portion of the offshore fleet operates beyond the Viet Nam exclusive and economic zones and for which species?

ANSWER: The main species targeted by the offshore vessels in territorial waters of Viet Nam include the large pelagic species: mackerel, tuna, swordfish, cuttle fish, the small pelagic species: fish scad, fish cheeks, anchovies, herring, amberjack.

To be more detailed, offshore is inclusive in the exclusive economic zone of Vietnam.

Currently, Viet Nam has around 25,000 vessels that capacity is higher than 90 CV, making up 20% of total vessels operating in the EEZ of Vietnam. The main target of these vessels are tuna species such as: striped cucumber, yellow fin, big eye, swordfish, sea level.

Page 105, paragraphs 4.46 and 4.48

According to the report, since 2005 there has been an increase of offshore vessels and since 1986 catch has exceeded the maximum sustainable yield.

EU questions 88 and 89: how does Viet Nam ensure sustainability in its waters? What is the situation of Viet Nam regarding the key international instruments in fisheries (UNFSA, Compliance Agreement or Port State measures)?

ANSWER: For the purpose of harvesting maximum sustainable yields, the Government of Viet Nam has been implementing sectoral strategies, management and action plans as follows:

- Decision 1690/QĐ-TTg dated 16/9/2010 of the Prime Minister approving the strategy for fisheries development until 2020;
- Decision 1445/QĐ-TTg dated 16/8/2013 of the Prime Minister on the approval of master plan for the fisheries development by 2020 with a vision toward 2030, in which the number of coastal vessels is targeted to reduce by 12% in 2020 and expected a further reduction to 95,000 vessels by 2030.

Viet Nam commits to fully implement relevant international rules on sustainable management and use of marine resources.

Implementation of the Agreement relating to the Conservation and Management of Straddling Fish Stocks and Highly Migratory Fish Stocks.

Viet Nam is the process of joining the Western and Central Pacific Fisheries Commission (WCPFC);

Viet Nam has issued Decision 188/QĐ-TTg dated 13/2/2012 of the Prime Minister approving the program of conservation and development of marine resources until 2020; Decision 1479/QĐ-TTg dated 13/10/2008 of the Prime Minister specifying plan for marine conservation in Viet Nam by 2020, in which 16 national marine conservation areas are expected to be established in Viet Nam.

The issuance of Decree 80/NĐ-CP dated 8/10/2012 of the Government on the management of fishing ports, storm shelter for fishing boats. This Decree provides a sound legal framework for regulating IUU.

Page 106, paragraph 4.52

According to the report, with its 567 processing plants, Viet Nam has a total capacity of about 2.5 million t. per year. However production is below capacity levels even though most imports are for processing and re-export.

EU question 90: Which species are mostly processed in these plants? Where are they originating from?

ANSWER: The main products that are produced in fisheries processing plants are as follows:

- Shrimp of all kinds (HS code 03 and 16), accounts for 40% of fisheries export value.
- Pangasium fish (HS code 03 and 16), accounts for 30% of fisheries export value.
- Seafood accounts for 30% of fisheries export value, including tuna, other fish (HS code 0301-0305, 1604), molluse, crab and crustacean.

Among the main fisheries products, pangasium fish products are totally made from domestic supply. For shrimp and seafood, due to shortage of domestic supply, Viet Nam imports about US\$450-500 million of material for processing and exporting. Viet Nam imports fisheries material from more than 60 countries, among them the main sources are China, Thailand, Indonesia, India, etc.

Page 108, paragraph 4.62

The paragraph describes the problems of overfishing, especially for crustaceans, cutter-fish and octopus.

EU question 91: Could Viet Nam explain what actions are taken by Viet Nam to overcome overfishing and whether there is any management plan in preparation/in place?

ANSWER: Especially concerning Indonesia's opinion about the content of the report, "Viet Nam had not implemented measures to cope with overfishing and destructive fishing.....", in Document

No. 23/TCTS-KHCN on 07/05/2013, Directorate of Fisheries, Ministry of Agriculture and Rural Development has proposed to leave this sentence in the report due to its inaccurate contents.

So far, the Government of Viet Nam has been attempting to manage the excessive exploitation and implementing measures to reduce IUU fishing, such as:

On 01/3/2013, the Prime Minister issued Decision 375/QD-TTg on production reorganization in marine fisheries, including measures to reduce the exploitation in coastal and inshore areas, control and manage fishing quota in the offshore areas, develop projects and policies on career transition, creating new livelihood, especially for trawlers.

Prime minister issued Decree 33/2010/ND-CP on the management of fishing activities conducted by Viet Nam organizations and individuals in all marine areas. Under this decree circular 25/2013/TT-BNN was issued by MARD detailing the implementation of some articles of Decree 33, which decentralized the coastal and inshore areas management for local authorities. Local authorities entrust communities with task to develop models of community-based fisheries management.

Directive 01/1998/CT-TTg of the Prime Minister to strictly ban the use of explosives, electric impulses and toxics to exploit aquatic resources. It is expected to promulgate regulation on the management of trawlers.

Viet Nam is in collaboration with FAO to develop the national action plan for managing fishing capacity which is scheduled to be completed in 2013.

Has been building a national action plan to prevent illegal, unreported and unregulated fishing.

Page 108, paragraph 4.64

According to the report, several support programmes have been or are being implemented to support the fisheries sector.

EU questions 92 to 94: Could Viet Nam clarify whether the whole fleet benefit from the fuel subsidies for fishing vessels? Or whether the eligibility to apply to this programme is/was limited to certain categories? Should it be the case, could Viet Nam indicate which are/were the eligibility criteria for applying for aid under the scheme?

ANSWER: Rising oil price in the year 2007, 2008 directly affected the lives of poor coastal fishermen. To help them overcome difficulties at that time, Prime Minister issued Decision 289/QD-TTg promulgating policies to support ethnic minorities, social policy households, poor and near-poor households and fishery households. The main purpose of these policies is to address the intermediate social security for the poor and near poor, including poor coastal fishermen.

4.4 Mining and Energy

4.4.1 Mining

Page 109, paragraph 4.69

Viet Nam's tightened licensing requirements and incremental fiscal regime have not helped the country to lure quality foreign investments, but to incentivize illicit mining activities and high-grade exploiting practices instead. Viet Nam is ranked 96 out of 97 surveyed countries as attractive investment jurisdictions around the world (Fraser Institute 2013).

EU question 95: Does Viet Nam have any plans for concerted policy actions so that good policy intentions would help to curb illicit mining activities while encouraging legitimate investments?

ANSWER: Currently Viet Nam has relatively comprehensive legal framework to curb illicit mining activities. This legal framework includes sanctions for violations of laws. In addition, cooperation among state management agencies at the central and other governmental local levels is stipulated at Article 80 - 83 on responsibilities of the governments in the Law on Minerals.

4.5.2 Motor vehicles

4.5.2.1 Automotive

Page 124, paragraph 4.104

On the basis of this paragraph, we note that some elements of the special investment incentives may put non local producers at a significant and unfair competitive disadvantage, depending on the importance of the tax breaks, land-lease incentives and other elements.

EU questions 96 and 97: Could Viet Nam submit further details on the special investment incentives for the automotive sector? In particular could Viet Nam clarify the link between the incentives and a minimum local content or to mandatory local content levels that will be required?

ANSWER: Upon WTO accession, Viet Nam revised its support policies for all relevant sectors, including automobiles, to make them consistent with WTO's rules. We believe that the current policy framework in the automobile industry is in full compliance with relevant WTO rules and principles.

4.5.3 Other manufacturing activities

Page 127, paragraph 4.112

For registration of new products (new chemical entities) foreign-invested companies are required to conduct clinical trials if the product has been available in their country of origin for less than five years; this requirement is being considered for amendment in the revision of the Pharmaceutical Law, so as to ensure better access to new medicines, while ensuring their safe and effective use.

EU question 98: Is Viet Nam considering waiving the requirement for mandatory local clinical trials for products that have already been reviewed and approved by major regulatory agencies and adopt the internationally accepted ICH E5 provision on ethnic sensitivity, which would eliminate the need for trials in most cases? Similarly, bridging guidelines may allow clarification on the conditions and criteria for acceptance of Asian or Vietnamese data from global trials.

ANSWER: Viet Nam is considering to propose in the draft law amending current Pharmacy Law new regulations which would abolish the threshold of 5 years period of circulation in the country of origin as a condition for new medicines to be exempted from local clinical trial requirement.

Instead, new regulations on local clinical trial requirement would base on different criteria, such as whether the medicine has been conducted a trial which is consistent with international standards and Vietnamese regulations, the impact of race factor (ICH E5), etc. Guidance for such newly proposed regulations must be detailed in the implementing documents, once the draft law is enacted.

4.6 Services

4.6.1 Features

Pages 128-129, paragraph 4.115

The report refers to the information provided by the World Bank (2011) that is "the lack of adequate manpower with tertiary education and appropriate skillsets seems to be the main constraint to growth, exposing the long-term limits of a services-led growth process in Vietnam".

EU question 99: How is Viet Nam to improve this situation, in particular in view of difficulties that skilled service providers encounter to enter the market in Vietnam, including reported problems to receive work and resident permits, or domestically burdensome requirements stemming from Decree No. 46/2011/ND-CP on foreigners working in Viet Nam (i.e. local apprenticeship requirement contract, requirement to publicly announce in at least one national and one regional newspaper recruitment needs to Vietnamese on the positions, including foreign managers, executives and specialists, 30 days prior to recruiting foreigners for such positions)?

ANSWER: Decree No.46/2011/ND-CP was replaced by Decree No. 102/2013/ND-CP detailing a number of articles of the Labour Code on employment of foreigners working in Viet Nam Pursuant to the new Decree, provisions on conditions, licensing procedures as well as deportation for labor workers who are foreign citizens working in Viet Nam. Under this Decree, the reissuance of work permits is done when work permits are expired. The extension of work permits is not stipulated under this decree.

4.6.2 Overall commitments under the GATS

Page 129, paragraph 4.118

According to the report, Viet Nam considers that it has fully complied with its accession's undertakings and that its laws and regulations in services sectors are consistent with the GATS commitments.

EU questions 100 and 101: Could Viet Nam clarify whether an economic needs test (ENT) is compulsory for any retail outlet beyond the first one? Should it be the case, which is the relevant legislation implementing defining the ENT criteria?

ANSWER: No, if the retail outlet is less than 500 square meters in size and is located in areas planned for goods trading activities by central-affiliated cities and provinces and where the construction of infrastructure is already finished, it is exempted from the economic need test (ENT).

The relevant legislations are Decree 23/2007/ND-CP dated 12 February 2007 and Circular 08/2013/TT-BCT dated 22 April 2013 providing guidelines on merchandise trade and directly related activities.

Page 131, paragraph 4.122

We understand that Viet Nam is planning to revise the Decree 69 on acquiring shares at Vietnamese commercial banks by foreign investors to allow more foreign ownership of Vietnamese credit institutions.

EU question 102: We are keen to learn more about the status of the plan as we think it would be a positive step toward further opening up of Viet Nam's banking sector.

ANSWER: According to Viet Nam's accession to WTO commitments, the total equity of foreign investors (including existing foreign shareholders) and relevant parties of these foreign investors may not exceed 30% of charter capital of a Vietnamese bank.

To comply with new regulations of the Law on Credit Institutions issued in 2010 and the policy of encouraging foreign investors to participate in restructuring process of weak joint venture banks, SBV is in the process of building and adopting a new Decree replacing the Decree No. 69/2007/ND-CP with some changes as follows:

- i. Eliminating the requirement on selling shares for foreign investors by Vietnamese commercial banks, specified in Decree No 69. The new Decree only requires that credit institutions should have the plan of selling shares which approved throughout General meeting of shareholders.
- ii. Regarding the total foreign equity:
 - The total equity of foreign investors and relevant parties may not exceed 30% of charter capital of a Vietnamese's commercial bank.
 - In the process of restructuring credit institutions system, in particular circumstances, Prime Minister decides total equity of foreign investors and relevant parties in specific weak joint venture credit institutions, which can exceed the limit set out.

Page 133, paragraph 4.125

The current banking licenses of banks do not mention derivatives, as a product or service. In practice, banks have been offering these products and services in line with various SBV's regulations or guidelines. We suggest that SBV allows banks to continue providing these products while waiting for the license updates to be approved.

EU question 103: Would Viet Nam consider allowing foreign banks to provide derivatives products (e.g. commodity swap, interest rate swap etc.)?

ANSWER: Paragraph 2 of Article 90 of the Law on Credit Institutions, 2010:

"Credit institutions may not conduct any business activities other than banking operations and business activities specified in their licenses granted by the State Bank.

Article 105, Law on Credit institutions, 2010:

"1. After obtaining the State Bank's written approval, commercial banks may deal in and provide to domestic and overseas clients the following products and services:

a/ Foreign exchange;

b/ Derivatives regarding exchange rates, interest rates, foreign exchange, currency and other financial products.

2. The State Bank shall specify the scope of foreign exchange trading; the conditions, order and procedures for approving foreign exchange trading; and the trading and supply of derivative products by commercial banks.

3. Commercial banks' provision of foreign exchange services to clients complies with the foreign exchange law.

Currently, SBV has issued several legal documents related to operating derivatives products, such as Regulation on implementations of interest rate swap transactions, Regulation on expanding commodity price swap. Accordingly, SBV allows requesting credit institutions to conduct additional activities in the establishment license granted by SBV. When conducting these activities, such credit institutions and branches of commercial banks shall comply with relevant laws of Viet Nam.

4.6.4.1 Banking and finance**Page 132, paragraph 4.123 and page 136, paragraph 4.132**

The report states that corporate governance is "at an early stage".

EU question 104: Is there any strategy in place by the Vietnamese authorities to ensure that domestic financial institutions, including the country's four largest banks "adjust, innovate and strengthen operational management and corporate governance"?

ANSWER: SBV has been requesting Credit institutions (including State Commercial banks) to consider and complete the plan of restructuring pursuant to Restructuring Scheme of credit institutions system in period 2011-2015. One of the central goals is strengthening governance and administration capacity of credit institutions with the following solutions:

- Strengthening discipline laws and regulations in banking operation, domestic regulations on jurisdiction, the approval process, decisions for credits, investment, etc. and in conviction violations among managers and executives at all levels.
- Strengthening transparency in banking operation by applying new information mechanism of credit institutions.

-
- Encouraging credit institutions to publish their equity shares on stock market.
 - Popularizing joint venture credit institutions and increasing number of investors and shareholders in rising charter capital periods, tightening control in changes in structure and capacity of big shareholders.
 - Implementing healthy internal procedures and policies, effectively applying advanced and suitable methods of governance in accordance with international and national rules of law.
 - Developing risk management systems complying with rules and standards of Basel Committee, focusing on liquidity risk management, credit risk, market risk (price, interest rate, exchange rate) and operational risk; developing the internal credit rating; categorizing debts; making risk provision in line with international rules and level of credit risk; strengthening assessment, evaluation and management credit risks capacity of credit institutions.
 - Renewing and enhancing the effectiveness of controlling and auditing systems.
 - Restructuring and rearranging business, governance and administration bodies; creating and appointing high educated, responsible and enthusiastic bank officers.
 - Modernizing technology; developing internal governance information system, information technology and internal payment system of commercial banks; improving the core bank system equivalent to scale, complication and operation requirements of credit institutions.

This is the basis for credit institutions in general and State-owned commercial banks in particular to consolidate and restructure their financial and administrative activities to become the main forces in the credit institutions system.

Page 133, paragraph 4.125

The report states that the SBV "does not seem to be entirely independent".

EU question 105: How do the Vietnamese authorities ensure that the supervision of state-owned commercial banks is carried out in an independent and impartial manner?

ANSWER: Currently, regulations on inspection and monitoring (Law on Credit institutions as well) credit institutions (including State-owned commercial banks) are implemented in an independent and impartial manner by State Bank.

4.6.5.2 Postal services

Page 141, paragraph 4. 145

The report does not elaborate on foreign ownership caps related to courier items transportation. Viet Nam's GATS commitments under courier services cover inter alia transportation of postal items and no limitation on foreign ownership should apply within 5 years of accession.

EU question 106: Viet Nam continues to require joint ventures and minority foreign ownership from courier companies wishing to operate its own trucks, though it is not scheduled in its commitments as limitation. Could Viet Nam inform when it plans to implement its commitments in this regard and remove the foreign ownership cap from transportation of postal items?

ANSWER: According to accession commitments, limitation on foreign ownership for transporting cargo by trucks is 50% with 100% Vietnamese drivers.

4.67 Distribution Services

Page 149

According to the report, distribution of alcohol was opened to foreigners in 2010. However, the Decree 94/2012/ND-CP adopted last year and concerning wine (production and) trading seems to limit each enterprise to have only one type of license (either production, wholesale or retail) as well as the number of licenses. This would impose a quota on the number of licences for each category based on population, while Viet Nam has not entered any quota in its limitations. These arrangements appear to contain restrictions that are not applicable to local producers.

EU questions 107 to 110: Could Viet Nam clarify what exactly Decree 94/2012/ND-CP modifies comparing to the provisions contained in the previous Decree 40/2008, in particular why it considered important to introduce a new category called distributors and limit the activities of wholesalers and retailers? Could Viet Nam clarify whether, according to this new Decree 94/2012, the distributors are allowed to sell to retailers? In particular, on the basis of Decree 94/2012, is it still possible for a foreign company who own and run a full global distribution network to continue carrying out all activities it was possible to run under Decree 40/2008 (importation, wholesale and retail)? As the Decree establishes a quantitative quota for licenses, could Viet Nam explain how this is in compliance with its GATS commitments?

ANSWER: Decree No. 94/2012/ND-CP of the Government dated 12 November, 2012 on wine production and trading replaced Decree No. 40/2008/NĐ-CP of the Government dated 7 April 2008 on the wine production and trading.

Decree No. 94/2012/ND-CP has solved a lot of difficulties in the management of wine production, import - export and trading in accordance with laws and regulations as follows:

1. As for state agencies:

- Strengthen the state management from the production to circulation of wine.
- Reduce administrative procedures of unnecessary conditions in issuing the License for wine trading.

The regulations on having stamps of the wine produced at home and the imported wine from the exporting or producing countries on the wine packages will create favourable conditions for the state management in smuggled wine, fake wine, the transparency in tax and the fairness for all enterprises, especially will minimize the tax evasion in small-scale production of wine for sale.

2. As for enterprises:

- Reduce the manufacturing of fake wine with the same wine packages of the enterprise, causing damages for wine producers and consumers. Reduce the tax fraud of the wine private producers, leading to the reduction in unfair price competition between tax-fraud producers/tax evaders and the ones with sufficient tax liability.
- For wine trading enterprises: Through Decree, the traders who are involved in the production, export, import and distribution of wine are fully aware of the rights and obligations of their business performance in accordance with laws and regulations. The Decree clearly stipulates the conditions for wine trading enterprises to do their business in accordance with laws and regulations.
- According to the Decree 94/2012/ND-CP, the enterprises being granted License for wine trading may only sell wine to traders having the Licenses for wine trading affiliated to their distribution system within the licensed area and only sell retail at their affiliated stores within the province.

- Decree 94/2012/ND-CP is applicable to the organizations and individuals engaged in the production and trading of wine, and other activities relevant to the production and sale of wine in Viet Nam's territory.
- Foreign traders, foreign-invested enterprises in Viet Nam are governed by this Decree.

According to the regulations of Decree No. 59/2006/ND-CP dated 12 June, 2006 of the Government, wine is a commodity which State restricts from trading. For this reason, the scope, scale, time, place of trading, the number of wine trading enterprises must be in accordance with the specified management demand and the growth planning of the network for goods and services in each period:

On 12 November 2012, the Government issued Decree No. 94/2012/ND-CP on wine production and trading which limits the number of wine wholesalers and distributors (including distributors, traders who distribute the wine produced at home and the imported wine).

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2 ECONOMIC DEVELOPMENTS AND TRADE POLICIES

2.2 Economic and Trade Policies

2.2.1.3 Economic restructuring

Page 10, paragraph 2.17

EU question 111: What does Viet Nam consider as 'social investment' that will be preserved for State investment (35-40%)?

ANSWER: Would you provide us with more clarification regarding your question?

EU question 112: What preferences does Viet Nam envisage to give to domestic investors?

ANSWER: Subject to the Investment Law 2005, investors of all economic sectors are treated equally. No specific investment incentives are provided to domestic investors (Article 4 of the Law).

2.2.2 Implementation of WTO Accession Commitments

2.2.2.3 Trade in Services

Page 16, paragraph 2.49

EU questions 113 and 114: Could Viet Nam provide further details on the new guidelines regarding the establishment of an Economic Needs Assessment Committee, clarifying whether they will be publicly available? How will the independence of the Economic Needs Assessment Committee be ensured from local distributors?

ANSWER: Pursuant to Circular 08/2013/TT-BCT the Provincial People's Committee decides on the establishment of an Economic Needs Assessment Committee. The sequences, procedures and membership of the Economic Assessment Committee are also regulated in the above mentioned Circular.

The Provincial People's Committee is the highest administrative body in a province, responsible for the activities of the Economic Needs Assessment Committee according the laws and regulations and ensures the neutrality in the assessment. In fact, the Economic Needs Assessment Committee does not include domestic distributors. In principle, Economic Needs Assessment Committee protects the interests of all enterprises (no differentiation if domestic or foreign one). In the recent time, the decisions made by the Economic Assessment Committees have been in favor of the foreign distributors.

FOLLOW-UP QUESTIONS FROM THE EUROPEAN UNION**SECRETARIAT'S REPORT****1 ECONOMIC ENVIRONMENT****1.4.2.4 Corporate governance and anti-corruption action****Page 24, paragraphs 1.19 and 1.20 (to be read jointly with paragraph 3.142, page 82)**

EU question 2: Referring to 1.4.2.4. (corporate governance) and 3.142 (Vinashin), can Viet Nam clarify what concrete steps are being taken to improve corporate governance, including supervision, monitoring, accountability and legal responsibility of SOEs?

EU question 3: Referring to 1.4.2.4. (transparency) can Viet Nam clarify what concrete steps are being taken to improve the transparency over the corporate and organizational structures, functions, financial performance and possible privileges and immunities of SOEs?

ANSWER: Viet Nam has adopted the Master Plan on improving corporate governance in conformity with the practice of market economy (attached to Decision No. 704/QD-TTg dated 11 June 2012). It is aimed to perfecting the socialist- oriented market economy, enabling the businesses to actively follow the market economic mechanism, promoting development and improving the efficiency and competitiveness of the business sector in Viet Nam.

Also, the Law on Enterprise is being revised in the way of continuing improvement of corporate governance, including supervision, monitoring, accountability and legal responsibility of SOEs.

EU Follow-up question: Does the implementation follow the timelines provided in the Master Plan? E.g. has Decree on supervision of "especially important SOEs", or the detailed guidance on information disclosures for SOEs been enacted by the Ministry of Planning and Investment?

ANSWER: Viet Nam is in the process of drafting legal documents to implement Decision No. 704/QD-TTg approving Master Plan on innovating corporate governance in accordance with market economy practice, such as Regulation on disclosing information of activities by state-owned single-member limited liability companies; Regulation on governing state-owned single-member limited liability companies.

For supervising state-owned enterprises and "especially important" state-owned enterprises, Viet Nam has promulgated Government Decree No. 61/2013/ND-CP on financial supervision, performance evaluation and disclosure of financial information applied to state-owned enterprises and state-invested enterprises; the drafting of the Decree on organization, management, operation and supervision of state-owned corporations and economic groups is also underway.

2 TRADE POLICY REGIME/ FRAMEWORK AND OBJECTIVES**2.4 Investment regime****Page 39, paragraphs 2.33-35**

EU question 9: Does Viet Nam envisage eliminating horizontal and/or sectoral restrictions on FDI spelled out in the Enterprise Law?

EU question 10: Does Viet Nam envisage to streamline the investment registration and evaluation procedures across all relevant authorities to have the same interpretation and implementation of the procedures and regulations and to eliminate discrimination between foreign and domestic investors?

ANSWER: Licensing authorities: the authorities who are authorized to issue investment certificate to Vietnamese and foreign-owned companies include provincial People's Committees and Management Boards of industrial and export processing zones.

EU Follow up question: The EU notes that Viet Nam's answer does not address all the elements in the EU above mentioned questions and would appreciate further information in particular

regarding the restrictions to FDI that do apply for example in the Enterprise law and for which the EU would like to know if Viet Nam intends to remove them. In addition, the EU is aware that different rules and regulations apply to different investments for example those in the financial services or in portfolio and do impose different rules and conditionalities.

ANSWER: In our opinion, the EU's questions are not entirely relevant as the Law on Enterprise does not provide for market access for foreign investors. In fact, the issue is dealt with in the Law on Investment and other relevant laws and regulations, which are not inconsistent with the market access commitments under WTO. If there are any specific issue or question which is formulated in a greater details regarding any specific sector that is alleged to be inconsistent with our WTO commitments, we would be willing to discuss them.

3.2.1 Import procedures and requirements

Page 43, paragraph 3.10

Although full trading rights were granted from 1 January 2009 to foreigner traders importing pharmaceuticals, there are no regulations setting out import formalities with each case being dealt individually creating uncertainty and delay. The Ministry of Health (MoH) had indicated that it would issue specific guidelines on the import of pharmaceutical products. We understand the MoH is close to publishing the guidelines and hope that they will facilitate the import of pharmaceutical products by foreign companies and not impede it by imposing pre-conditions.

EU question 13: Could Viet Nam clarify when specific guidelines on the import of pharmaceutical products will be issued?

ANSWER: The Ministry of Health (MOH) is in the stage of finalizing the draft Circular providing for the implementation of export, import rights by FDI enterprises in the field of pharmaceuticals in Viet Nam. The MOH has been being in close collaboration with relevant ministries such as MOIT, MPI, MOJ, etc. in order to elaborate this draft Circular since 2008. The draft Circular has been circulated for soliciting public comments from relevant stakeholders, including foreign enterprises, and would be enacted in the coming time.

EU follow up questions: Could Viet Nam clarify whether the draft implementation guidelines are publicly available? In this case, could Viet Nam submit the link to the webpage?

Does Viet Nam envisage to put in place a more effective public consultation in the future?

ANSWER: The draft Circular was made publicly available at the web pages of the DAV and the MOH for comments from interested parties, for a period of 60 days. At the same time, the DAV also sent official letters to domestic and foreign enterprises operating in the field of pharmaceuticals in Viet Nam soliciting comments, meetings with relevant ministries and authorities such as MoJ, MoIT, MPI, MoF, Government Office, etc. regarding the content of the draft circular were held for a number of times. In fact, DAV has received a substantial number of comments from both domestic and foreign pharmaceutical enterprises, including many enterprises from the EU, represented by the Pharma Group. In our view, public consultation on the draft Circular has been carried out in full compliance with the provisions of the Law on drafting and promulgation of legal normative documents in 2008.

3. Trade policies and practices by measures, 3.4.6. Government procurement

Page 79, paragraph 3.128:

Initial EU questions 57 to 59: What is the importance of limited bidding in terms of percentage with regard to the overall procurement carried out by the Vietnamese contracting authorities? Does Viet Nam's procurement legislation lays down rules for the use of electronic procurement? If yes, could Viet Nam provide details on this matter?

ANSWER: The draft Law on Procurement (revised) provides regulations on e-procurement for transparency and simplification of tendering procedures, and is in full compliance with international

commitments with strong determination in corruption prevention and efficiency improvement in tendering activities.

EU follow up question: What is the importance of limited bidding in terms of percentage with regard to the overall procurement carried out by the Vietnamese contracting authorities?

ANSWER: As stipulated in the Law on Procurement 2005, open tendering is the main type. Limited tendering is only applied in the following cases: (a) Where a foreign donor providing the financing for the tender package so requires; (b) Where the tender package has high technical requirements or technical peculiarities; or in the case of tender packages of a research or experimental nature for which only a limited number of bidders are capable of satisfying the requirements of the tender package.

3.4.7 State trading, state-owned enterprises and privatization/equitization

Page 81, paragraph 3.139 (to be read together with 1.4.22 Privatization (paragraph 1.17))

It is stated in 1.4.22. (1.17) that "the state sector remains relatively large, accounting for 33% of GDP in 2011 (35.9% in 2007) (Table 1.5). While it has become smaller, the trend towards "equitization", divestment, mergers, acquisitions, and liquidation, was reversed in 2009 and 128 new wholly state-owned enterprises were added, a pattern that persisted during 2010 and 2011." It is further stated in 3.4.7 (3.139) that "State-owned enterprises currently account for approximately 38% of Viet Nam's GDP, only slightly less than in 2004 or 2005" but in footnote 120 that "adding subsidiaries of SOEs and private enterprises controlled by top government officials, the State sector may account for as much as 70% of Viet Nam's GDP".

EU question 63: In view of this, how will Viet Nam ensure that its trading partners are able to compete fully with SOEs on equal footing and on a level playing field in Viet Nam and also in markets outside Viet Nam?

ANSWER: Viet Nam has fully complied with commitments on operation of state-owned enterprises. Accordingly, all enterprises that are State-owned or State-controlled, including equitized enterprises in which the State has control, and enterprises with special or exclusive privileges, make purchases, not for governmental use, and sales in international trade, based solely on commercial considerations, e.g., price, quality, marketability, and availability. The enterprises of other WTO Members have an adequate opportunity in accordance with customary business practice to compete for participation in sales to and purchases from these enterprises on non-discriminatory terms and conditions. In addition, the Government of Viet Nam does not influence, directly or indirectly, commercial decisions on the part of enterprises that are State-owned, State-controlled, or that have special and exclusive privileges, including decisions on the quantity, value or country of origin of any goods purchased or sold, except in a manner consistent with the WTO Agreement and the rights accorded to non-governmental enterprise owners or shareholders.

Viet Nam does not adopt or maintain any measure inconsistent with the above-mentioned commitments.

EU follow-up question: Since there is little information available to the public related to Viet Nam's SOEs operation, the EU would appreciate if Viet Nam could give updated information on the issuance of the detailed guidance on information disclosures for SOEs, as provided for under the Decision 704 dated 11/6/2012.

ANSWER: In terms of detailed guidance on information disclosures for SOEs, Viet Nam has promulgated Government Decree No. 61/2013/ND-CP on financial supervision, performance evaluation and disclosure of financial information applied to state-owned enterprises and state-invested enterprises. In addition, Viet Nam is in the process of drafting other legal documents to implement Decision No. 704/QD-TTg including Regulation on disclosing information of activities by state-owned single-member limited companies and Regulation on governing state-owned single-member limited liability companies.

4. Trade policies and practices by sectors

4.6 Services

4.6.4.1 Banking and finance

Page 132, paragraph 4.123 and page 136, paragraph 4.132

The report states that corporate governance is "at an early stage".

EU question 104: Is there any strategy in place by the Vietnamese authorities to ensure that domestic financial institutions, including the country's four largest banks "adjust, innovate and strengthen operational management and corporate governance"?

ANSWER: SBV has been requesting Credit institutions (including State Commercial banks) to consider and complete the plan of restructuring pursuant to Restructuring Scheme of credit institutions system in period 2011-2015. One of the central goals is strengthening governance and administration capacity of credit institutions with the following solutions:

- Strengthening discipline laws and regulations in banking operation, domestic regulations on jurisdiction, the approval process, decisions for credits, investment, etc. and in conviction violations among managers and executives at all levels.
- Strengthening transparency in banking operation by applying new information mechanism of credit institutions.
- Encouraging credit institutions to publish their equity shares on stock market.
- Popularizing joint venture credit institutions and increasing number of investors and shareholders in rising charter capital periods, tightening control in changes in structure and capacity of big shareholders.
- Implementing healthy internal procedures and policies, effectively applying advanced and suitable methods of governance in accordance with international and national rules of law.
- Developing risk management systems complying with rules and standards of Basel Committee, focusing on liquidity risk management, credit risk, market risk (price, interest rate, exchange rate) and operational risk; developing the internal credit rating; categorizing debts; making risk provision in line with international rules and level of credit risk; strengthening assessment, evaluation and management credit risks capacity of credit institutions.
- Renewing and enhancing the effectiveness of controlling and auditing systems.
- Restructuring and rearranging business, governance and administration bodies; creating and appointing high educated, responsible and enthusiastic bank officers.
- Modernizing technology; developing internal governance information system, information technology and internal payment system of commercial banks; improving the core bank system equivalent to scale, complication and operation requirements of credit institutions.

This is the basis for credit institutions in general and State-owned commercial banks in particular to consolidate and restructure their financial and administrative activities to become the main forces in the credit institutions system.

EU follow-up question: Could Viet Nam elaborate whether the above visions have been reflected in concrete plans/ legal enactments to ensure the legal binding and effective implementation?

ANSWER: In recent years, the State Bank of Viet Nam has been implementing the adjustment, reform and strengthening of management and governance activities of credit institutions. This is reflected by the issuance of a number of legal normative documents such as: Circular No. 44/2011/TT-NHNN of 29 December 2011 providing for the internal control system and internal audit of credit institutions, foreign bank's branches; Circular No. 02/2013/TT-NHNN dated

21 January 2013 regulating the classification of assets, the level and methods of risk provisioning and the use of reserves to handle risks in the operation of credit institutions, branches of foreign banks, as amended by Circular 12/2013/TT-NHNN dated 27 May 2013.

In addition, the State Bank of Viet Nam is drafting a circular regulating risk management systems in banking operations. The purpose of the circular is to create a common framework for risk management for the system of credit institutions in accordance with international standards, establish criteria for supporting inspection and supervision in assessing quality of risks management, prevent major risks in banking activities and substantially meet some of the most important principles out of the 25 basic principles for effective banking supervision of the Basel Committee and be compatible with Basel II in the long-term.

In the near future, the SBV will continue to improve the legal framework for the development of the risk management system in accordance with the principles and standards of the Basel Committee, which focuses on the liquidity risk, credit risk, market risk (price, interest rates, exchange rates) and operational risk management systems; developing credit rating systems, internal loan classification performance, provision risk reserve in accordance with international practice and the levels of credit risk; improving credit assessment and evaluation, and credit risk management and supervision of credit institutions.

QUESTIONS FROM HONG KONG, CHINA

PART I: QUESTIONS REGARDING THE SECRETARIAT REPORT

3. TRADE POLICIES AND PRACTICES BY MEASURE

Page 65 (Para. 3.77)

Subsidies

We note that Viet Nam has so far only notified the WTO in March 2013 of its subsidy support program applied in 2005-07.

Question:

1. We wish to know the reason for the delay and if Viet Nam has any work in progress or plan to notify the WTO of its latest subsidy program pursuant to the notification requirements of both the Subsidies and Countervailing Agreement and Article XVI of GATT 1994.

ANSWER: Due to capacity constraint, Viet Nam hasn't been able to provide the notification on the latest subsidy programs. After submitting the Notification on Subsidy programs applied in 2005-2007, Viet Nam has been drafting the Notification on Subsidy Programs (in both agriculture and industry) applied in the period post 2007 and Notification on State Trading Enterprises, and will try to submit these notifications at the soonest time.

4. TRADE POLICIES BY SECTOR

Page 131 (Para. 4.122)

Financial Services

The Viet Nam government intended to partially privatise all state-owned commercial banks (SOCBs). However, the progress of equitisation has been slower than planned and the government remains the controlling shareholder. In April 2011, the State Bank of Viet Nam issued a regulation on the selection criteria for domestic and foreign strategic investors for the "equitised" SOCBs.

Question:

2. Grateful if Viet Nam would share with us the latest development of equitisation of SOCBs. How many shares of these SOCBs are currently held by domestic and foreign investors respectively? What factors have been taken into account by the State Bank of Viet Nam when drafting the regulation on setting the selection criteria? In the application of the selection criteria, are there any differences between domestic and foreign investors?

ANSWER: The equitisation of state enterprises in general and in particular state-owned commercial banks (SOCBs) reflected Viet Nam's political determination in reforming its economy toward market economy. As a result, four over five SOCBs have been equitised up to now, including:

- Viet Nam Commercial Bank (Vietcombank): This is the first SOCBs chosen by the Government as a pilot of the equitisation process. It starts to operate as a SOCBs in June 02, 2008 after its initial public offering in stock market (IPO). In June 30, 2009, the shares of Vietcombank (code VCB) had officially listed in Ho Chi Minh city Stock Exchange.
- Vietnam Bank for Industry and Trade (Vietinbank): In 2009, Vietnam Bank for Industry and Trade had officially become Vietnam Joint Stock Commercial Bank for Industry and Trade and listed in Ho Chi Minh city Stock Exchange.

- Mekong Housing Bank (MHB): MHB also successfully conducted its IPO in July 2011.
- Bank for Investment and Development of Viet Nam: Since April 23, 2012, it officially became Joint Stock Commercial Bank for Investment and Development of Viet Nam.

Shareholding percentage in these above-mentioned banks is as follows:

Name	% of state-owned share	% of local shareholders	% of foreign shareholders
VCB	77,11	4,6	18,29
Vietinbank	80,31		19,73
BIDV	95,76		
MHB	91,26		

The last state-owned commercial bank is Bank on Agriculture and Rural Development (Agribank). Since January 1, 2011, Agribank was reformed and operated as a single holder limited company where the State owns 100% of its shares.

Criteria for selecting strategic shareholders of the equitized SOCBs are listed in Circular No.10/2011/TT-NHNN issued by the SBV on April 22, 2011, according to which, strategic shareholders are organizations with well-known reputation, having good capacity in terms of finance, managing and operating, etc. They must also have strategic interests suitable to the development strategy of the banks and satisfy each bank specific criteria.

Item 1, Article.3 of the Circular provides minimum criteria for selecting foreign strategic shareholders as follows:

For the foreign strategic shareholders:

- a. Being a foreign credit institution or foreign financial institution with total assets equivalent to at least 20 (twenty) billion U.S. dollars in the preceding year of the year of enrolment to be strategic shareholders;
- b. Having over 05 (five) years experience in international activities;
- c. Being rated by international independent rate organization (e.g. Moody's, Standard & Poor's, Fitch Rating ...) at a level that makes it able to implement the financial commitments and normal operation even when the situation, conditions of economy changed to the unfavorable trend;
- d. Not being a strategic shareholder, major shareholder, founding shareholder of any credit institution in Vietnam;
- e. Having written commitments on assisting the equitized state-owned commercial bank in the fields specified in Clause 1 Article 2 of this Circular and a long-term close commitment to the equitized state-owned commercial bank.

Page 144 (Para. 4.156)

Maritime Services

Under the 2005 Viet Nam Maritime Code, priority is granted to Vietnamese ships in the carriage of cargo and of passengers and luggage between Vietnamese seaports; but foreign sea-going ships may be permitted to provide these services whenever Vietnamese ships are not in a position to do so. While there are only 30 Vietnamese container ships that could satisfy 30% of the demand, we noted that a document from the Ministry of Transport (MOT) in June 2012 stipulated the temporary halt of the presence of ships under foreign flags in the domestic container shipping market. The extension of expired licences and the granting of new licences to the ships under the foreign flags have also been suspended since January 2013.

Question:

3. What is the reason of the temporary halt of the presence of foreign ships in domestic container market, especially when we understand that domestic ships charge higher fees than foreign ships and the service quality of domestic fleet seems to be lower than that of international shipping groups? Have the authorities made any attempt to consult or inform the stakeholders, foreign ships owners in particular, before the issue of June 2012 MOT document? Is there any schedule to review the measure and, if so, when? Has the 2005 Viet Nam Maritime Code been superseded by the June 2012 MOT document? As the 30 Vietnamese container ships cannot satisfy all of the demand, what measures have been taken to tackle the shortage?

ANSWER: The reason of the temporary halt of the presence of foreign ships in domestic container market is that the Vietnamese vessels are now able to provide this kind of services. Transportation fees are decided by enterprises and the government doesn't intervene in this issue. With current 30-container vessels and more vessels to be supplemented, Vietnamese enterprises can satisfy all of the domestic demand.

Page 146 (Para. 4.163)**Air Transport**

Viet Nam Airlines (VNA) is the state-owned national flag carrier. It owns 100% of Viet Nam Air Service Company (VASCO); 70% of the low-cost carrier Jetstar Pacific Airlines (JPA); and 49% of the Cambodian national airline Cambodia Angkor Air. VNA and VASCO make up 71% of the domestic aviation market. Since May 2013, VNA has been preparing for "capitalisation" and the first stage of the process had been agreed and signed.

Question:

4. Please share with us the scope and details of "capitalisation", its latest progress and implementation schedule. Will foreign investors be allowed to hold the shares of VNA? If so, what are the criteria and terms for foreign participation?

ANSWER: Currently, the airlines is in the process of determining its value so that by the end of first quarter 2014, its shares can be sold to the public and strategic investors, including domestic and foreign investors, provided that foreign strategic investors have similar lines of business with Vietnam Airlines and the buying conditions will be subject to Viet Nam's laws and regulations.

Page 150 (Para. 4.174)**Distribution Services**

On foreign participation in distributions service, an economic needs test (ENT) is compulsory for any retail outlet to be established by foreign investors beyond the first one. However, as there is no nationwide implementing legislation to clarify the ENT criteria, non-uniform interpretations could be made by different local authorities. This creates legal uncertainty for investors. The Vietnamese authority is considering and appraising the ENT and a new nationwide circular will be issued. But the ENT content, standards, and criteria would vary in each locality due to the uneven economic conditions in different areas.

Question:

5. Would Viet Nam explain the reason and the need for maintaining the ENT which is only applicable to foreign companies? We note that a new nationwide circular on ENT will be issued are interested to know the progress and its target publishing date. What measures will be implemented to enhance the transparency of ENT in different regions of the country?

ANSWER: ENT was committed in Viet Nam's WTO commitment in distribution service in Mode 3, which is applied for foreign investors. Circular No 08/2013/TT-BCT dated 22 April 2013 replaced Circular No 09/2007/TT-BCT dated 17 July 2007, is now effected.

ENT is more clarified in Circular No 08: "The setting up of retail establishments including the first retail establishments must abide by law regulations on state management for retail activities and be conformable with the related master plans of central-affiliated cities and provinces, where are expected for setting up of retail establishments.

QUESTIONS FROM INDIA

Part I : QUESTIONS REGARDING THE SECRETARIAT REPORT

Page 44 (Para 3.12)

The Viet Nam National Petroleum Group (Petrolimex) is the main company importing (and distributing) petroleum products. However, adapting a more market-based mechanism, Government Decree No. 84/2009/ND-CP of 15 October 2009 expands trade in petroleum products beyond state-owned enterprises to other enterprises that meet certain conditions. According to Article 23 of Decree No. 84, the Ministry of Planning and Investment coordinates with the Ministry of Industry and Trade to set annual "import orientations", i.e. the projected demand for imported crude oil and petrol in a given year. On this basis, the Ministry of Industry and Trade assigns minimum import quotas to be fulfilled by the licensed traders.

Question 1

(a) Apart from Petrolimex, could Viet Nam provide a listing of "licensed traders" with trading rights (i.e. the right to import) petroleum products?

ANSWER: Vietnamese traders that meet the provisions of the Decree No. 84/2009/ND-CP dated October 15, 2009 of the Government on petroleum products trading can obtain import-export licenses. There are now 16 enterprises licensed for import and export petroleum products, including Petrolimex, and an enterprise licensed for importing and exporting jet fuel.

(b) Do these licensed traders of petroleum products also have distribution rights?

ANSWER: According to the Decree No. 84/2009/ND-CP, licensed petroleum traders also have distribution rights in domestic market.

(c) No information has been provided on quota administration of petroleum products. How are the "minimum import quotas" assigned to the licensed traders?

ANSWER: Every year, based on the consumption demand and domestic production capacity in the country, the Ministry of Industry and Trade forecasts domestic consumption volume and assign minimum import quotas to licensed petroleum traders. This assignment is based on their proposals and a balance with domestic demand and production.

(d) Could Vietnam elaborate on the conditions to be fulfilled to import petroleum products?

ANSWER: According to Article 7 of the Decree No. 84/2009/ND-CP dated 15 October 2009 of the Government, a trader who fully meets the following conditions may obtain a license for exporting and importing petrol and oil:

- Being established lawfully, having registered petrol and oil trading in its business registration certificate;
- Having specialized wharves within Vietnam's international port system, which are capable of receiving imported oil tankers or other means of transport with a capacity of at least seven thousand (7,000) tons under its ownership or co-ownership or on a lease for at least five (5) years;
- Having depots under its ownership or co-ownership or on a lease for at least five (5) years with a minimum capacity of fifteen thousand (15,000) cubic meters to receive imported petrol and oil from oil tankers and other means of transport;
- Having specialized means under its ownership or co-ownership or on a lease for at least five (5) years to transport petrol and oil to ensure petrol and oil supply to its distribution network;

- Having its own network for distributing petrol and oil with at least ten (10) retail shops under its ownership or co-ownership and a network of at least forty (40) agents;
- Exporters and importers of jet fuel are not required to have distribution networks under paragraph v) of this Article, but must have jet fuel filling equipment under their ownership or co-ownership.

(e) How are the annual "import orientations" determined? Is there a gap between the projected demand (and actual consumption) of petroleum products?

ANSWER: The annual "import orientations" is determined based on the total demand for production and consumption of domestic market and total volume of domestic produced and refined products. The gap between the forecast demand and the actual one is usually narrow because the MOIT only assigns minimum quota.

Page 44 (Para 3.15)

Passenger cars (9 seats and less) became subject to additional import requirements in May 2011 (Ministry of Industry and Trade, Circular No. 20/2011/TT-BCT of 12 May 2011). Viet Nam now requires such vehicles to be accompanied by a certificate or an assignment from the manufacturer, dealer or contracted agency, stating that the importer is the authorized importer or distributor. A warranty and maintenance certificate issued by the Ministry of Transportation of Viet Nam is also required.

Question 2

1. What are the procedures and requirements (documents or other) for issue of the "warranty and maintenance certificate" by the Ministry of Transportation? How much time is taken to process applications? What fees are charged for issue of warranty/certificate?

ANSWER: This regulation is stipulated in the Circular No. 19/2012/TT-BGTVT dated 06 Jun 2012 of the Ministry of Transport. The processing time for a certificate is no longer than 5 working days after fulfilling application document and assessment report and the fee is 10 million VND for a 3-year certificate.

Page 10 (Para 16)

STAMEQ, which is the WTO TBT enquiry point, also represents Viet Nam in a number of international and regional standards organizations and its subsidiary bodies are responsible for metrology, conformity assessment, quality assurance, and certification. At the end of 2012, Viet Nam had 6,800 national standards, 40% of which were harmonized with international, regional, or foreign standards, and 116 technical committees with plans to complete 813 standards in 2013.

Question 3

(a) Of 6,800 standards mentioned by the STAMEQ only 40 % is harmonized with external standards and the balance 4080 standards are national standards. India would like to know broadly the commodity-wise application of these national standards?

(b) Among the international/regional/foreign standards, India would like to know the composition of foreign standards and also if any of these are the so called "private standards". If yes, what is the commodity-wise distribution of these private standards?

ANSWER: Of the remain 60% is developed based on various grounds including international, regional and foreign standards taking into account of specific domestic condition.

The majority of national standards of Vietnam are entirely consistent with international and region standards. The standards that are comply with foreign standards (US, Australia, Japan...) accounts for small portion (less than 5%). "Private standards" like Global GAP, Fairtrade, Organic,

Rainforest Alliance, Utz... are applied in Vietnam however, they are not accepted as national standards. The application of these private standards is the requirement of export market.

Page 130 (Para 4.119)

Viet Nam has signed eight services-related mutual recognition arrangements (MRAs) with ASEAN countries, on engineering services (2005), nursing services (2006), architectural services (2007), surveying qualifications (2007), dental practitioners (2009), medical practitioners (2009), accountancy services (2009), and tourism professionals (2009).

Question 4

Viet Nam is requested to provide details of mechanism to recognize qualifications obtained in other countries as envisaged in these MRAs.

ANSWER: We are collecting information about these MRAs and shall provide them when they are ready.

Page 139 (Para 4.140)

Non-discrimination is guaranteed in granting access to and use of public telecommunications transport networks; public telecom services providers have an obligation to allow other public telecom services providers to interconnect with their network under equitable and reasonable conditions.

Question 5

Viet Nam is requested to explain the conditions applicable for allowing interconnection by public telecom service providers to other service providers.

ANSWER: The conditions and principles of telecommunication connectivity among telecommunication enterprises are stipulated in Article 42 of the Law on Telecommunications as the following:

1. Telecommunication enterprises have the right to connect its telecommunication networks with telecommunication networks or services of other telecommunication enterprises and the obligation to permit other telecommunication enterprises to connect with its telecommunication networks or services.
2. Connectivity among the telecommunication networks and services shall comply with the following principles:
 - a) Through negotiations on the basis of ensuring fair, reasonable, consistent with the rights and interests of the parties involved;
 - b) Use effectively telecommunication resources and telecommunication infrastructure;
 - c) Ensure the technical requirements for telecommunication connectivity and security, consistency among communications networks;
 - d) Ensuring the rights and legitimate interests of users of telecommunication services and organizations and individuals involved.

Page 141 (Para 4.145)

Cross border services of international couriers (e.g. FedEx, OSC, Airborn) are provided under agent contract with domestic postal operators. The authorities envisage promoting fair competition and gradual deregulation, as well as passing a new legal framework ensuring a stable and orderly postal market.

Question 6

Viet Nam is requested to provide salient features of this new legal framework and when is it expected to come in existence?

ANSWER: To contribute to the stability and development of the postal markets, help enterprises of all economic sectors to operate in the business environment of fair competition, transparency and let enterprises are autonomic in their operations, Vietnam has built a legal framework for postal through the issuance of Law on Postal 2011, Decree 47/2011/ND-CP, and other related documents to guide the Law on Postal.

The new legal framework identified the clear boundary between the postal sector and other sectors so that it can avoid duplication and to be in accordance with the actual situation of Vietnam and international practices. This is very essential and objective requirement in order to enhance and complete the legal system of postal, improving efficiency of state management and international integration.

Page 143 (Para 4.151)

The authorities indicated that some new WTO-consistent regulations have been promulgated in maritime transport services business (2007), and multimodal transport services (2009).

Question 7

Viet Nam is requested to provide details of these new regulations for maritime transport services and multimodal transport services.

ANSWER: Government Decree no 115/2007/ND-CP on maritime transport services business came into force on July 5th 2007.

The services under the coverage of this decree means maritime transport agent, towing vessel, and others related services.

For maritime transport agent service, the condition is to establish an enterprise according to the Law on Enterprise 2005. The foreign participation in maritime transport agent businesses must not exceed 49% capital.

For towing vessel service, the condition is the same as maritime transport agent service with additional condition of have vessel carrying Vietnam flag.

For other related services, enterprises must comply with Viet Nam WTO's and other international treaties commitment in which Viet Nam is a member.

For multimodal transport service, please refer to Government decree no 87/2009/ND-CP on multimodal transport services have been promulgated on October 19th 2009. This Government Decree stipulate a set of conditions required to supply international and domestic multimodal transport service,

The businesses regulated by this Decree include Vietnamese and foreign companies.

For more details, please refer to the Decree no 87/2009/ND-CP.

Page 65 (Para 3.80)

The Viet Nam Development Bank provides financing to key projects in Viet Nam, relating to infrastructure projects, power generation, and sanitation plants etc.

Question 8

Could Viet Nam provide details of the financing program of the Viet Nam Development Bank? Has the Viet Nam Development Bank imposed the condition of 'local content' in any of its financing till date?

ANSWER: According to the provision of Decree 75/2011/ND-CP, VDB makes loans for investment listed in annex I of this Decree, including projects for social infrastructure, rural agriculture, difficult economic areas, and these should not be associated with any conditions of local content.

QUESTIONS FROM INDONESIA

GOVERNMENT REPORT

2 ECONOMIC DEVELOPMENTS AND TRADE POLICIES

2.2 Economic and Trade Policies

2.2.1 Macroeconomic and Structural Policies

2.2.1.5 Trade Remedy Regime

Page 12 Para. 2.28

"Regarding the implementation of legal framework for trade remedies, Viet Nam has not conducted any countervailing investigation so far. With regard to safeguard measures, Viet Nam initiated a safeguard investigation against imports of float glass through Decision No. 3329/QDBCT of 1 July 2009 and terminated the case with no safeguard measures imposed. Recently, on 26 December 2012, the Ministry of Industry and Trade initiated a safeguard investigation on imports of certain refined vegetable oils. On 22 April 2013, Viet Nam made the decision to impose the provisional safeguard measure with the duty of 5% and the investigation is underway. With regard to anti-dumping measures, on 2 July 2013, Viet Nam has made a decision to initiate an anti-dumping investigation on certain cold-rolled stainless steel originating in the Republic of

Indonesia, Malaysia, Chinese Taipei, and the People's Republic of China."

Question:

1. As for the safeguard on vegetable oil, Indonesia noted that its export to Viet Nam is considered as a very small quantity. Would Viet Nam authority exclude Indonesia from this measure?
2. As for the Anti-Dumping investigation on cold rolled stainless steel, the similar situation applied since Indonesian producer only contributes a very small portion of the Viet Nam's total imports of the subject goods. In this opportunity, Indonesia would like to request the Government of Viet Nam to seriously take into consideration the cooperative Indonesian producer in a fair and consistence to the WTO Agreement and to keep Viet Nam commitment to enhance regional cooperation.

ANSWER: As for the safeguard investigation on the imports of refined vegetable oils, according to the statistics from General Department of Viet Nam Customs, the import volume of product under investigation from Indonesia into Viet Nam in 2012 is 106,173 tonnes which accounts for 18.73% of total imports of products under investigation into Viet Nam. This volume of imports from Indonesia is not considered negligible, therefore Indonesia is not eligible for the exclusion from the application of safeguard measures pursuant to Article 9 of the WTO Agreement on Safeguards reflected by Article 13 of Decree No.150/2003/ND-CP dated December 8th 2003 by the Government of Viet Nam.

As for the anti-dumping investigation on cold rolled stainless steel, the similar situation is applied. The import volume of products under investigation from Indonesia in the period of investigation is 6,410 tonnes which account for about 6.9% of total import volume of products under investigation. This volume of imports is not considered negligible for Indonesia to be eligible for the exclusion from the investigation pursuant to Article 5.8 of the WTO Anti-dumping Agreement reflected by Article 19 of the Ordinance 20/2004/PI-UBTVQH11 dated 29 April, 2004 on the Anti-Dumping on Imported Goods into Viet Nam. The investigations by VCA will be conducted in accordance and compliance with the WTO Agreement.

2 ECONOMIC DEVELOPMENTS AND TRADE POLICIES
2.2 Economic and Trade Policies
2.2.2 Implementation of WTO Accession Commitments
2.2.2.2 Other Commitments on Trade in Goods

Page 14 Para. 2.42

"With respect to price management, pursuant to the WTO commitments, the price management mechanism has been gradually improved in a way consistent with the movement of the market economy. The promulgation of Decree No. 75/2008/ND-CP of the Government which details the implementation of the Ordinance on Prices clearly reflected the changes in the price management in the areas of price valuation, stabilization, registration and declaration, whereby the State has gradually granted the price valuation rights to enterprises. More recently, since 1 January 2013 the Ordinance on Prices has been replaced by the Law on Price 2012. With the issuance of the new Law, the scope and circumstances for application of price registration and declaration have significantly been narrowed down."

Question:

3. Please provide further information concerning the price management in Viet Nam?
4. What are the most significant sectors/sub sectors dominantly affected by this price management system?
5. What is the main focus of this price management system?

ANSWER: Price management in Viet Nam shall comply with the principle of respecting autonomy and right to pricing based on arm-length agreement by relevant entities and individuals.

Price management mainly focus on the state monopoly goods and services; Public goods and services; goods and services with limited competition or subject to volatile fluctuations in the price in order to rectify and control market failures. For example, goods subject to price management include petroleum, electricity.

The main purpose of the price management system is to protect the rights, legitimate interests of the organization, individuals, consumers and the State; ensure that there is no discrimination in prices.

2 ECONOMIC DEVELOPMENTS AND TRADE POLICIES
2.2 Economic and Trade Policies
2.2.3 Trade Policy Developments since WTO Accession
2.2.3.3 Recent Trade and Trade Related Policy Developments
2.2.3.3.4 Telecommunications

Page 20 Para. 2.66

"While the State holds ownership directly or indirectly in all telecom operators, the market structure is that of a competitive market. For example, while the State has ownership in each of the 6 licensed mobile businesses, competition is fierce among them, especially in terms of prices. Though the telecommunications sector is still protected by equity caps on foreign ownership and the State's involvement in the form of capital contribution in a number of enterprises operating in the telecom sector remains significant, Viet Nam is committed to grant full national treatment to FIEs in all market segments."

Question:

6. Please provide information how much the equity caps on foreign ownership and the State's involvement in the form of capital contribution in the telecom sector?

ANSWER: Please refer to Viet Nam commitments on service (Sub-sector on telecommunication Part C, page 28-34) to the WTO.

3. OUTLOOK

Page 21 Para. 3.5

"The Government of Viet Nam will further enhance our regional integration, especially through ASEAN and ASEAN+ agreements on trade in goods and trade in services, as well as other FTAs that have been signed, which Viet Nam is firmly committed to fully implement the liberalization commitments according to the agreed schedules and time frames. For those bilateral and regional FTAs that are under negotiations, we will make best effort to conclude them in due course as targeted by all parties."

Question:

7. Referring to the current investigation initiated by Viet Nam Authority on safeguard and anti-dumping which targeting goods from ASEAN members (in this case Indonesia). How shall Viet Nam keep its commitment as said in paragraph 3.5 above?

ANSWER: Viet Nam only initiates investigations on safeguard and anti-dumping when the domestic industries suffer serious injury due to sudden increase of imports or unfair competition. These investigations are entirely consistent with rules of the WTO and other multilateral and bilateral trading regimes.

SECRETARIAT REPORT

SUMMARY

Trade Policy Developments

Page 9 Para. 11

" Viet Nam bound the entire tariff schedule in the context of its WTO accession, and mostly in the 0-40% range. The simple average MFN tariff has declined significantly, from 18.5% in 2007 to 10.4% in 2013, as Viet Nam has been phasing-in its tariff concessions. However, differences between bound and applied rates have left some scope for flexibility, and Viet Nam has made use of this, *inter alia*, to reduce fluctuations in domestic energy prices, and to provide additional protection to selected industries since 2008. Tariff rate quotas regulate imports of eggs, sugar, unmanufactured tobacco and tobacco refuse, and salt."

Question:

8. Given the large differences between bound and applied rates, Indonesian exporters face significant uncertainty in the Viet Nam market because the government made use this flexibility, to reduce fluctuations in domestic energy prices, and to provide additional protection to selected industries since 2008. Indonesia calls for the Viet Nam government to decrease differences between the bound rates and applied rates.

ANSWER: In normal context, Viet Nam maintains applied MFN rates equal to its bound rate in WTO. However, in certain circumstances, applied MFN rate could be adjusted downwardly to smooth out the "imported inflation" effect of on domestic market (such as energy commodities). In such cases, the adjustment and its subsequent reversal should abide by Viet Nam tariff commitments in WTO and undergo a published and transparent process as required by the Law on Promulgation of legal normative documents in Viet Nam.

Page 9 Para. 14

In 2008, Viet Nam introduced what it considers to be automatic licensing for a wide range of consumer products and agricultural items. The product coverage was extended in 2010, reduced somewhat in 2011, and temporarily suspended as from September 2012. However, certain steel products are still affected by this measure. In April 2010, the Ministry of Industry and Trade issued a long list of "non-essential" imported commodities and consumer goods not encouraged for import, and the State Bank of Viet Nam discourages the granting of loans by credit institutions to

finance imports of such items. A requirement to channel all imports of wines, spirits, cosmetics, and mobile phones through three seaports only was in effect from May 2011 until the end of 2012."

Question:

9. Could Viet Nam provide information on how to define "non-essential" imported commodities and consumer goods?
10. Could Viet Nam give the long list of "non-essential" imported commodities and consumer goods?
11. Please provide the rationale or background on why the State Bank of Viet Nam discourages the granting of loans by credit institutions to finance imports of such items.

ANSWER: List of "non-essential" imported commodities and consumer goods not encouraged for import issued by the Ministry of Industry and Trade of Viet Nam is a reference document for relevant ministries and agencies to develop policies consistent with WTO, such as increase or decrease in MFN tax in line with the international commitments of Vietnam; application of technical measures to trade in line with TBT Agreement in WTO.... This Decision of the Ministry of Industry and Trade of Viet Nam is not a legal and mandatory document.

The issuance of this Decision is definitely not intended to restrict the provision of foreign currency loans to finance imports of the listed items. Current regulations do not allow the Government or the State Bank to get involved in business activities of commercial banks and credit institutions in Viet Nam have the right to decide, in accordance with current legislation, which enterprises to provide foreign currency loans to import goods (without any discrimination between essential and non-essential goods).

2 TRADE POLICY REGIMES: FRAMEWORK AND OBJECTIVES

2.4 Investments Regime

Page 40 Para. 2.38

"Private ownership of land is not permitted in Viet Nam, which relies on public ownership and state management of land resources. However, the Land Law of 26 November 2003 (as amended) allows land to be leased, and assets associated with the land and the value of land-use rights may be mortgaged. Procedures for the establishment of land-use rights are under the Provincial Committees. Although the duration of a land-lease agreement should not exceed 50 years, leases may be extended upon expiry of the initial term(s). For certain projects (e.g. large investments or those benefiting socio-economic difficult areas) the Government may grant land leases with an initial duration of up to 70 years."

Question:

12. Please provide the rationale or background on why private ownership of land is not permitted in Viet Nam?
13. Is this policy also applied to local investor?

ANSWER: The policy with respect to ownership of land is stipulated in Viet Nam's 1992 Constitution (amended in 2001). Therefore, it is applied to both local and foreign investors.

3 TRADE POLICIES AND PRACTICES BY MEASURE

3.4 Measures Affecting Production and Trade

3.4.1 Subsidies

Page 65 Para 3.77

"Viet Nam did not provide subsidy notifications until March 2013, when it notified details of support programmes applied in 2005-07. Without a more recent update, the information contained in this section can only be considered indicative of the kind of support provided to specific industries or more generally available to encourage investments, regional development, research, etc.

Moreover, the Secretariat has no reliable data on debt forgiveness to loss-making state-owned or private enterprises."

Question:

14. Could Viet Nam please provide information about its intention to submit an updated subsidy notification covering the years 2008 onwards?

ANSWER: Viet Nam affirms its full compliance with notification obligation of the WTO. However, due to capacity constraint, Viet Nam has not notified all the measures affecting trade as required by WTO Agreements. Viet Nam is now drafting a number of notifications on subsidy for the post 2007 period, state trading etc. and shall notify them to the WTO at the soonest time.

3 TRADE POLICIES AND PRACTICES BY MEASURE

3.4 Measures Affecting Production and Trade

3.4.2 Standards, technical requirements, and conformity assessment

3.4.2.1 Technical barriers to trade

Page 67 Para 3.87

"A number of government agencies are responsible for standards, technical regulations,

conformity assessment procedures, and other measures related to technical requirements. These agencies include the Ministries of: Science and Technology; Industry and Trade; Agriculture and Rural Development; Information and Communication; Natural Resources and Environment; Transport; Health; Labour, Invalids and Social Affairs; Culture, Sports and Tourism; and Construction. The Ministry of Science and Technology is responsible for publishing and managing national standards and technical regulations in the *Official Journal*; it is responsible along with the other ministries for developing standards and technical regulations for products and services in its areas of competence."

Question:

15. Please provide information on how to determine conformity assessment scheme which implemented in Viet Nam.
16. Which government agencies are responsible to supervise and monitor the covered products under the regulations in domestic market?

ANSWER: In accordance with Food Safety Law 2010 and Decree 38/2012/NĐ-CP, supervising and monitoring roles for domestic products are sharing between Ministry of Agriculture and Rural Development, Ministry of Health and Ministry of Industry and Trade.

3 TRADE POLICIES AND PRACTICES BY MEASURE

3.4 Measures Affecting Production and Trade

3.4.2 Standards, technical requirements, and conformity assessment

3.4.2.2 Sanitary and Phytosanitary Measures

Page 75 Para 3.110

"Importers of food and agricultural products have to provide the Viet Nam authorities with a number of supporting documents (Table 3.13). Depending on the product, these may include a certificate of free sale (CFS) (Prime Minister's Decision No. 10/2010/QĐ/TTg), from the competent authorities of the exporting country, stating that the product is produced and freely sold in the country of origin. The list of agricultural goods to which this requirement applies is part of Circular No. 63/2010/TT-BNNPTNT from the Ministry of Agriculture and Rural Development. The products affected are mostly non-food agriculture and fishery products but all products containing genetically modified materials, products that were irradiated, and products that were produced by new technologies require a CFS when imported to Viet Nam."

Question:

17. Indonesia seeks more clarification and detailed information concerning the "certificate of free sale (CFS)".

ANSWER: According to Circular 63/2010/TT-BNNPTNT, Article 9: CFS must include sufficient required information as laid down by Decision No. 10/2010/QD-TTg of February 10, 2010 of the Prime Minister providing certificates of free sale for exports and imports (Article 6, Paragraph 2). Details:

"A CFS must be made in English on A4-size white paper and contain at least the following details:

- | | |
|---|--|
| a/ Name of the CFS issuing agency (issuer); | f/ Name and address of the manufacturer; |
| b/ Its reference number; | g/ Statement that the product or good is manufactured and freely sold on the market of the country of manufacture; |
| c/ Date of its issuance; | |
| d/ Name of the certified product or goods; | h/ Full name, signature and title of the CFS-issuing person and seal of the CFS issuer" |
| e/ Type or group of the certified product or goods; | |

4 TRADE POLICIES BY SECTOR**4.2 Agriculture****4.2.3 Policies****Page 100 Para 4.21**

"State-owned enterprises play a critical, though declining, role in the production, processing, and trade of agricultural products (Table 4.3). Examples include:

- Viet Nam Northern Food Corporation (Vinafood1) and the Viet Nam Southern Food Corporation (Vinafood2), which purchase, process, import, and export food and salt products. About half of Viet Nam's rice exports are exported by these two corporations. Until marketing year 2012/13, Vinafood2 had the exclusive right to sell to the Philippine market, and has retained exclusive supplier status for government-to-government contracts, which totalled about 200,000 tonnes for 2012/1310;
- Viet Nam National Coffee Corporation (Vinacafe) which, through its subsidiaries, member companies, and associated companies, has interests in all stages of the coffee chain. The Corporation's interests in production are mostly limited to research into coffee production, and it assists producers by providing seeds and advice. Vinacafe is currently being restructured and it has disposed of a number of subsidiaries11;
- Viet Nam Rubber Corporation, which is the largest natural rubber company in Viet Nam with 40 subsidiaries, 39 farms, and 30 processing plants. It accounted for 70% of total production in Viet Nam in 200512; and
- Viet Nam National Tea Corporation (Vinatea), which is involved in all stages of tea production, processing, and marketing, and is involved in research and providing extension services."

Question:

18. What are the differences between Vinafood1 and Vinafood2?

ANSWER: There is no differences in nature between Vinafood 1and Vinafood 2. They are two different companies.

19. Please provide information on the main function of Vinafood1, Vinafood2, Vinacafe, Viet Nam Rubber Corporation and Vinatea?

ANSWER: Please go to website of the mentioned Corporations to refer their main functions. These companies operate as common businesses under the Vietnamese laws with their core business in Food and relating products, rubber and tea.

20. Vinacafe is currently being restructured and it has disposed of a number of subsidiaries. What is the rationale behind this policy.

ANSWER: Vinacafe is restructured as many other corporations being under restructuring to enhance competitiveness, efficiency. Moreover, many of its subsidiaries are under equitization according to Decision 2101/QĐ-TTg of the Prime Minister on approval of Restructuring plan of Vinacafe in period of 2011-2015.

21. What kind of strategy does Viet Nam apply to increase the competitiveness in agricultural sector?

ANSWER: Please refer to Decision 899/QĐ-TTg of Prime Minister on June 10th 2013 for more in detailed information.

4 TRADE POLICIES BY SECTOR

4.2 Agriculture

4.2.3 Policies

4.2.3.1 Trade policies

Page 101 Para 4.27

"According to the authorities, Viet Nam does not control exports of any agricultural products."

Question:

22. Could Viet Nam please provide more elaboration on this matter?

ANSWER: Since accession to the WTO, Viet Nam's export control measures have been applied in a manner fully consistent with the WTO agreements.

4 TRADE POLICIES BY SECTOR

4.2 Agriculture

4.2.3 Policies

4.2.3.2 Domestic policies

Page 101 Para 4.29

"The supporting tables also showed Amber Box support for rice, sugar, cotton, and pork, along with non-product-specific support. However, only support for sugar was over the 10% *de minimis* threshold. Viet Nam bound its Total Aggregate Measurement of Support at \$3,961.59 billion. The main policy tools used were interest rate and input support and, for sugar, price support. Since acceding to the WTO, Viet Nam has not made any notifications on domestic support or on export subsidies to the Committee on Agriculture."

Question:

23. Could Viet Nam please provide information on its intention to submit notification on domestic support or on export subsidies to the Committee on Agriculture for the years 2007 onwards?

ANSWER: Viet Nam has completed a report on domestic support or on export subsidies in 2007-2008 and has sent to WTO Secretariat for comments. The official notification will submit to the Committee on Agriculture in 2013.

Also Viet Nam is going to collect information on domestic support or on export subsidies in 2009-2012. The official notification will submit to the Committee on Agriculture in 2014.

4 TRADE POLICIES BY SECTOR

4.3 Fisheries

4.3.3 Policies

Page 108 Para 4.64

"Several support programmes have been or are being implemented to support the fisheries sector including:

- In response to higher fuel prices, Government Decision No. 289/TQ-TTg of March 2008 provided temporary support to a number of sectors, including fuel subsidies for fishing vessels. Total spending on the programme was $\text{đ}1,600$ billion;
- Prime Minister's Decision No. 137/2007/QĐ-TTg of August 2007 on organizing information for preventing natural disasters at sea included a project to build an information system on the management of marine fisheries. The first phase of this project started in 2009 to provide fishers and management agencies with weather and oceanographic information. The second phase, due to start in 2010, was to introduce a GPS-based vessel position monitoring system and a ship-to-shore communication system. The total amount required for the first phase was $\text{đ}92.42$ billion, of which $\text{đ}34.8$ billion was from the state budget; and
- for the 2006-2010 phase of the programme for fisheries ports, landing sites, and fish markets, the Ministry of Fisheries (now the Ministry of Agriculture and Rural Development) allocated $\text{đ}1,498$ billion."

Question:

24. Are there any criteria for fishers and management agencies to receive support programmes in fisheries sector?

ANSWER: Rising oil price in the year 2007, 2008 directly affected the lives of poor coastal fishermen. To help them overcome difficulties at that time, Prime Minister issued Decision 289/QĐ-TTg promulgating policies to support ethnic minorities, social policy households, poor and near-poor households and fishery households. The main purpose of these policies is to address the intermediate social security for the poor and near poor, including poor coastal fishermen.

OTHERS

"The New Regulation on food safety in Viet Nam for imported foodstuffs of plant origin (Circular Ref. No. 13/2011/TT-BNNPTNT dated 16 March 2011). Several agricultural products from Indonesia have been rejected by Viet Nam due to the issuance of the Viet Nam new regulation on food safety for imported foodstuffs of plant origin. This regulation has caused loss of market of Indonesia agricultural products in Vietnam."

Question:

25. This regulation had caused loss of market of Indonesian agricultural products in Viet Nam. In this regards, we kindly request Viet Nam to review and terminate the aforesaid Regulation.

ANSWER: Circular 13/2011/TT-BNNPTNT dated 16 March 2011 had been notified to WTO under Notification G/SPS/N/VNM/21 dated 4 August 2010 since drafting period. In accordance with the Circular, country would like to export the **foodstuff** of plant origins has to register with Vietnamese competent authorities. This Circular does not regulate **plant quarantine operation**. According to competent authorities of Viet Nam Indonesia is in the list of approval to export foodstuff of plant origin to Viet Nam. Viet Nam finds no evidence of loosing market of Indonesia cause by this Circular.

26. Indonesia requests Viet Nam to use data on production sites of the registered Indonesia's exporters/producers-exporters in exchange of verification process to each production site of Indonesia.

ANSWER: Verification process of Viet Nam is currently done by paper base work. Sharing information from trading partner is welcome to facilitate the process

27. Indonesia asks Viet Nam to provide the standard requirement for imported seeds of maize and the result of the risk assessment done by Viet Nam on seeds of maize of Indonesia.

ANSWER: Final result of risk assessment done by Viet Nam on seed of maize of Indonesia is not completed yet. However, this product is still permitted to import to Viet Nam. Regulation should following Circular 39/2012/TT-BNNPTNT and Decision 48/2007/QD-BNN. Competence authorities from Indonesia are recommended to contact frequently with Department of Plant Protection or National Notification Authority and Enquiry Point of Viet Nam for updated information.

The Lengthy time procedure and process of registration for pharmaceutical products.

"Lengthy time of registration for Indonesia's pharmaceutical products in Viet Nam has caused higher cost and delay of importation. Time for registration requires around 18-24 months, while time for renewal of registration is 10-15 months. Viet Nam also applies different period of registration for the registration of enterprises and products, which respectively last for 2 and 5 years."

Question:

28. Indonesia requests Viet Nam to consider Indonesia's proposals on shortening or optimizing the registration time and equalizing the validity period of pharmaceutical product registration.

ANSWER: According to the current Pharmacy Law, within six months as from the date of receiving complete and legitimate registration applications, the Ministry of Health shall issue medicine registration number; in case of rejection, the Ministry of Health will release written replies with reasons enclosed.

Viet Nam is considering to propose in the draft law amending current Pharmacy Law new regulations which would classify the time limits for responding to medicine registration applications according to the type of applications (new medicines, generic medicines, re-registration, etc.).

Currently, validity period of a Company license (for operating in the field of pharmaceuticals) is 5 years and validity period of a medicine registration number is also 5 years, except for some special cases, such as new medicines, medicines need re-evaluating safety and efficacy, where the validity period may be shorter. However, after re-registration, an equal 5 years period of registration number validity can be granted for such medicines if their safety and efficacy reports meet the regulated requirements.

QUESTIONS FROM JAPAN

2 ECONOMIC DEVELOPMENTS AND TRADE POLICIES

2.2 Economic and Trade Policies

2.2.2 Implementation of WTO Accession Commitments

2.2.2.3 Trade in Services

Question 1: Page 15, Paragraph 2.43

When foreign investors, (either located overseas or in Viet Nam), wishing to make an investment, (for example, a company or branch establishment, etc.,) have troubles at a local investment application acceptance window, (for example, they are told that they cannot invest even though they should be able to do so or asked for unnecessary documents, etc.,) is there any contact point which can mediate the trouble between the relevant ministries and agencies, conveying an appropriate answer for the company? What are the legal grounds for that?

ANSWER: Regarding investment registration for foreign investment projects, paragraph 3 Article 44 Decree 108/2006/ND-CP states that within 15 working days after the date of receipt of the valid business and investment registration dossiers, the licensing agency shall check the validity of the investment registration dossier or the business registration dossier (in case of establishment of an economic organization associated with an investment project) and grant investment certificates without requiring any additional papers.

Question2: Page 15, Paragraph 2.43

When foreign enterprises establish a company in Viet Nam, are they treated differently from Vietnamese enterprises in the service sectors that are committed to non-discrimination in the Schedule of Specific Commitments under the GATS? What is the legal basis for that? How do you see its consistency with Specific Commitments under the GATS?

ANSWER: Foreign enterprises are not treated differently from Vietnamese enterprises when establishing a company in Viet Nam in services sectors that are committed to non-discrimination in Viet Nam's Schedule of Specific Commitments under the GATS. We affirm that Viet Nam fully complies with its specific commitments under the GATS.

Question3: Page 15, Paragraph 2.48

Are there any plans to make more liberalization in the telecommunications sector, such as the removal of limitations for foreign investment in the sector of non-facility-based services?

ANSWER: The plans of management and development of telecommunication services market will be implemented based on the development conditions, capacity and demands of Vietnam's economy.

2.2.3 Trade Policy Developments since WTO Accession

2.2.3.3 Recent Trade and Trade Related Policy Developments

2.2.3.3.2 Customs Modernization

Question4: Page 18, Paragraph 2.58

Different HS codes have been applied for the same products by customs. "Advanced Ruling" is implemented in Viet Nam, but actual HS codes vary from agent to agent as interpretations of HS codes are not unified among custom agents, resulting in confusion. Japan would like to know whether Viet Nam plans to take any measures to address this problem.

ANSWER: The Amendment Law of Law on Tax Administration no. 21/2012/QH2013 enters into force in July 1st 2013. According to this, objectives of "Advanced Rulings" have been extended and facilitated the importers who face difficulties on classification and identification HS code of goods.

Customs of Viet Nam has developed Information System to manage database on nomenclature, tariff schedules and classification, tariff rates (MHS) for management, inspection, control and implementation the goods classification, HS code identification of imported and exported goods consistently in the country.

Report by the Secretariat (WT/TPR/S/287)

3 TRADE POLICIES AND PRACTICES BY MEASURE

3.2 Measures Directly Affecting Imports

3.2.1 Import procedures and requirements

Question5: Page 43, Paragraph 3.10

(1) The distribution right of pharmaceuticals was to be granted to foreign enterprises in and after January 2009, but it has not been realized so far. When will foreign enterprises be permitted to start distribution?

(2) Decision 10/2007/QD-BTM prohibits pharmaceuticals that are included in the WTO List (such as antibiotics, biological products, etc.) from distribution by foreign enterprises. Are there any plans to review or partially relax the List? (See attached file: List of pharmaceutical products prohibited from distribution.pdf)

ANSWER: As committed in the WTO, foreign enterprises are granted with trading right of pharmaceuticals. However, It is also stated in Viet Nam's Schedule of Specific Commitments in Services in the WTO that cigarettes and cigars, books, newspapers and magazines, video records on whatever medium, precious metals and stones, pharmaceutical products and drugs, explosives, processed oil and crude oil, rice, cane and beet sugar are excluded from the commitments in distribution services. Thus, Viet Nam has the right not to grant the distribution right of pharmaceuticals to foreign enterprises.

(3) Circular No. 2001/TT-BYT: Export/Import rights of pharmaceuticals by a FDI foreign enterprise with a subsidiary in Viet Nam (10th draft) has not been finalized, causing delays in granting foreign enterprises an import right. This draft also sets forth a requirement that a company must be granted a distribution right to import pharmaceuticals for the purpose of marketing in Vietnam. Given the current situation in which foreign enterprises are not entitled to obtain distribution rights, the circular, even though it is promulgated, does not give foreign enterprises a right to import pharmaceuticals. Will foreign companies be granted the import right of pharmaceuticals in the future?

ANSWER: The Ministry of Health (MOH) is finalizing the draft Circular regulating the trading right of FDI enterprises in the field of pharmaceuticals in Vietnam. MOH has been being in close collaboration with relevant ministries such as MOIT, MPI, MOJ etc. in order to elaborate this draft Circular. The draft Circular has also been circulated publicly for comments and opinions from relevant stakeholders, including foreign enterprises, and will be enacted in the coming time.

3.3 Measures Directly Affecting Exports

3.3.3 Export restrictions

Question 6: Pages 62-63, Paragraph 3.67

The report mentions that Viet Nam has issued a circular that lists forestry products subject to export prohibition. According to the circular, the prohibition is applied to export of round or sawn timber produced from domestic natural forests.

(1) Please provide information on the annual harvest of timber from domestic natural forests in Viet Nam.

ANSWER: Currently, the logging of natural forests can only be carried out under sustainable forest management plan approved by competent authorities. Annual exploitation target on natural forest management approved by the Government are as follows: 2011: 200,000 m³; 2012: 111.000 m³; 2013: 89.000 m³.

(2) What kind of products are these timbers from natural forests processed into?

ANSWER: Timbers from natural forest are mostly processed for handicrafts, furniture and building materials.

(3) Could Viet Nam explain whether or not timber products from natural forests in Viet Nam are exported to foreign countries?

ANSWER: According to Article 7 of Circular No. 88/2011/TT-BNNPTNT dated 28/12/2011 promulgated by MARD guiding the Government's decree No 12/2006/ND-CP dated January 23, 2006 detailing the implementation of the Commercial Law, wood and wood products derived from natural forests can be exported except for round, sawn timber and products made from Group IA timber (other than timber being confiscated under current state regulations) under Decree No. 32/2006/ND-CP dated 30/3/2006 of the Government on management of endangered, precious, and rare species of wild plants and animals and products made of timbers specified in Appendix I of CITES

In fact, production targets of nature forest exploitation are low while domestic demand is high. Consequently, products from natural forest are mostly consumed in local market. Wood products exports of Viet Nam are mainly derived from plantations forests and imported wood.

(4) To what extent are those products from natural forests exported?

ANSWER: However, export of wood and wood products derived from natural forests requires documents proving the legal origin in accordance with current regulations of Viet Nam's laws, including legal documents for exploitation, transportation, purchasing, processing, taxes, customs procedures etc.

(5) Could Viet Nam provide a reason that it does not ban the export of timber products other than round or sawn timber?

ANSWER: In Viet Nam, there are about 25 million people, mostly ethnic minorities, living in or near the forest. Their lives depend on the forest. Thus, the ban on exports of round and sawn timber from natural forests aims at encouraging the development of wood processing industry, create jobs and improve wood products value which contribute to reduce the poverty of people in mountainous and remote areas.

(6) The measure of the export ban makes it impossible for foreign industries to access natural forest resources in Viet Nam, while domestic industries such as the furniture-making industry still maintain access to the resources. In this light, the measure may be problematic with respect to even-handedness. Could Viet Nam please explain which article of the GATT the measure taken by Viet Nam could be justified under?

ANSWER: As explained in question 5, Viet Nam only bans the export of round and sawn timber derived from local natural forests. For natural forests which have been permitted to be exploited and processed, domestic and foreign enterprises share the same business opportunities.

Wood harvested from natural forests is auctioned in transparent procedures that are published to all individuals, organizations, regardless of domestic and foreign enterprises. Viet Nam has no legal barrier to restrict the access of foreign enterprises to process these timbers.

3.4 Measures Affecting Production and Trade

3.4.7 State trading, state-owned enterprises, and privatization/equitization

Question7: Page 83, Paragraph 3.143

The report mentions that Viet Nam has so far not notified the WTO, although it maintains state-trading enterprises. Japan would like to know the reason why the Viet Nam has not notified the WTO.

ANSWER: Viet Nam has been drafting the notifications and shall submit to the WTO Secretariat at the soonest time. For further clarity, Viet Nam affirms that there have not been any changes to the list of committed products subject to state trading enterprises.

3.4.10 Trade-related intellectual property regime

3.4.10.2 Intellectual property

3.4.10.2.3 Enforcement

Question 8: Page 93, Paragraph 3.191

According to paragraph 3.191, remedies under Article 46 of the TRIPS Agreement are provided for in Article 214.3 of the IP Law and Articles 29 to 31 of Decree No. 105/2006/ND-CP in Viet Nam. At the same time, Clause 4 of Article 29 of Decree No. 105/2006/ND-CP provides that an infringement-handling agency may apply "appropriate measures" other than distribution or use for non-commercial purposes in accordance with Article 30 of the decree or destruction under Article 31 of the Decree. Could Viet Nam provide practical information about the above-mentioned "appropriate measures"?

ANSWER: We will provide the response at the soonest time.

Question 9: Page 94, Paragraph 3.193, Table 3.17

Total numbers of IPR infringement cases are shown in Table 3.17. Such statistical data provides a good base for the planning of countermeasures against IPR infringements. It would be appreciated if Viet Nam could also provide the numbers of infringement cases for each authority.

ANSWER: The numbers of infringement cases for each authority in the period 2006–2011 are as follows:

1. Inspectorate of the Ministry of Culture, Sports and Tourism inspected 237 enterprises for their compliance with legal provisions on protection of copyrighted software, music and applied art works. The agency imposed monetary fines and ordered those companies to remove pirated software like Microsoft windows XP, windows 7, windows server, Autocad, etc. installed on over 8,500 computers.
2. Inspectorate of the Ministry of Science and Technology inspected 159 enterprises and handled 154 cases of industrial property infringement, 9 of which were disciplined by warning penalty, 144 were subject to monetary fines with 2.3 billion VND in total, and many of the infringing elements were ordered to be destroyed or removed from goods.
3. Market Surveillance Agency inspected, discovered and handled 18,984 cases of trading counterfeit and intellectual property infringing goods, and imposed monetary fines of 98 billion VND in total.
4. Inspectorate of the Ministry of Information and Communication inspected over 1,000 enterprises, discovered 180 breaches of provisions on protection of copyright in the field of publication, disciplined with warning penalty to 30 and imposed 150 with monetary fines of 1.5 billion VND in total, confiscated 100 tons of books and 100,000 infringing copyright books.
5. The customs forces received 150 applications for examination and supervision to detect goods containing signs of infringement of intellectual property rights. Accordingly, 275 IP-related subject matters were subject to supervision. This agency seized thousands kinds of products like cigarette, bags, Viagra, etc., most of them were intellectual property counterfeit goods, and imposed monetary fines of 3.6 billion VND.
6. Enforcement agencies at local levels including inspectorates, market control, customs, and police) examined and inspected 21,649 enterprises, discovered and handled 4,180 for infringements of industrial property and copyrights). These agencies gave warnings in 3,782 cases and imposed monetary fines of 11.6 billion VND.

4 TRADE POLICIES BY SECTOR

4.2 Agriculture

4.2.3 Policies

Question10: Page 100, Paragraph 4.21

The report mentions that Viet Nam Southern Food Corporation (Vinafood 2) had the exclusive right to sell rice to the Philippine market until 2012/13, and has retained exclusive supplier status for government-to-government contracts. Does Vinafood 2 have the status of State Trading Enterprise consistent with Article XVII of the GATT 1994 or the working definition in the Understanding on the Interpretation of Article XVII of the GATT 1994 ?

ANSWER: Firstly, the appointment of exclusive exporters does not mean a privilege accredited by the State, but in accordance with the needs, agreements signed with other countries. In Viet Nam, the appointment of exclusive exporters strictly follows the principles of capability, experience in exporting to the markets under exclusive contracts, to ensure the exporters can fulfill government commitments, raising the confidence in implementing bilateral commitments.

Secondly, the appointment of exclusive exporters in inter-government contracts does not preclude other exporters from selling rice to those markets, given that they abide by laws and regulations of importing countries as well as the bilateral agreement signed by the two governments.

4.5 Manufacturing

4.5.3 Other manufacturing activities

Question11: Pages 127-128, Paragraph 4.112

(1) Clinical trial requirements are being considered for amendment. The requirements for submitting the results of local clinical trials in Viet Nam will be exempted for new drugs which are less than 5 years after launch in the original country. What are the further prospects for them?

ANSWER: Under the draft law amending current Pharmacy Law, Viet Nam is considering to propose new regulations to abolish the threshold of 5-year period of circulation in the original country as a condition for new medicines to be exempted from local clinical trial requirements. Instead, new regulations on local clinical trial requirements would base on different criteria, such as whether the medicine has been conducted a trial which is consistent with international standards and Vietnamese regulations, the impact of race factor (ICH E5), etc. Guidance for these proposed regulations must be made in greater details in the implementing documents, once the draft law is enacted.

(2) Currently, it is required to file the CIF price of imported prescription drugs with MOH to control the local distribution margin. Is there any possibility that this system might be abolished or relaxed?

ANSWER: According to the Inter-ministerial Circular No. 50/2011/TTLT-BYT-BTC-BCT dated 30/12/2011 by MOH, MOF and MOIT, when applying for medicine registration, applicants (foreign medicine manufacturers/ the entities authorized to conduct medicine registration) have to declare the tentative CIF price of the product when arriving at Vietnam's ports. This is one of the requirements for medicine price management, in order to ensure public access to medicines in Vietnam. Viet Nam believes that at present, the above mentioned medicine price management mechanism is necessary and need to be maintained.

4.6 Services

4.6.1 Features

Question12: Page 128, Paragraph 4.114

Paragraph 4.114 explains that a Master Plan for the Development of Services Sector has promoted the services sector up to international standards. Japan would like to know which specific sector(s) or subsector(s) is the main target of the Plan, and what Viet Nam actually has implemented to develop or promote it/them.

ANSWER: The main targets of the Master Plan are telecommunication services, financial services, education services, logistic services, transport services, tourism services, healthcare services, and distribution services.

4.6.5 Communications

4.6.5.3 Broadcasting and film industry

Question13: Pages 141-142, Paragraph 4.147

While the report refers to the Prime Minister's Decision on pay television broadcasting (issued on 15 May 2013), could Vietnam:

(1) Explain the background and reason why such Decision was issued?

ANSWER: Pay television activities or activities of other sectors should be governed by a legal framework so that the related parties know their rights and obligations, especially the regulation of pay television in this case.

(2) Provide information on the possibility to repeal the Decision to amend or remove all requirements?

ANSWER: The second question is inconsistent with the objectives of the trade policy review.

Question14: Page 142, Paragraph 4.148

While the report refers to the Amended Cinematography Law (issued on July 2010), could Vietnam:

(1) Explain the background and reason behind Amendment?

ANSWER: Background and reason behind Amendment

Viet Nam enacted its Cinematography Law No. 62/2006/QH11 on 29/06/2006. In 2007, Viet Nam officially joined the WTO and made some commitments on audio-visual services which were not consistent with the Law on Cinematography. Therefore, the purposes of the Amended Cinematography Law are:

- To ensure the consistency of the Law on Cinematography with the WTO commitment.
- To make investment policy in audio-visual services more transparent.

The practice in the recent years proves that the amendments are consistent with the actual situation of cinematographic activities in Viet Nam as well as WTO commitments. Details are as follows:

- Annuling paragraph 3 of Article 15 of Cinematography Law No. 62/2006/QH11 regulating the nationality requirement of the director of the film producing company to comply with WTO commitments on national treatment;
- Promulgating regulation on the capital contribution of foreign investors, which shall not exceed 51% of legal capital, in accordance with the commitment of audiovisual services.

(2) Provide information on the possibility to amend or eliminate all favorable treatments given to local films?

ANSWER: Information on the possibility to amend or eliminate all favorable treatments given to local films: Cinematography Law does not provide any preferential treatments to local films.

4.6.6 Transport

Question15: Pages 142-149, Paragraphs 4.149-4.171

As for the Transport Service sector, the scheduling of Viet Nam's specific commitments prescribes that the foreign ownership limitation will be removed in January 2012 (some will be removed in January 2014). Japan would like to know whether the related domestic laws or regulations were already established. If not, please provide the progress of the enactment and prospects in January 2014.

ANSWER: Viet Nam committed to allow 100% foreign invested enterprises in Viet Nam to provide the international transportation services (in 2012). Accordingly, foreign enterprises are operated under the Law on Enterprises and Law on Investment.

As for Air Transport Services concerned, the foreign ownership limitation relates only to the maintenance and repair of aircraft. This limitation was automatically removed in 2012, after 5 years for the date of Vietnam's accession to WTO without the need to establish related laws or regulations.

4.6.6.1 Maritime services

Question16: Pages 145-146, Paragraph 4.161

The report by the WTO Secretariat says, in paragraph 4.161, that some port user charges to ships of over 50,000DWT at the international transit ports of Cai Mep - Thi Vai have been discounted and this is an extension of the decision on preferential fees and charges released by MOF in October 2010. Japan would like to ask Viet Nam whether Viet Nam has in mind a further extension/a transition to permanent implementation of reductions.

In addition, according to Japanese shipping companies, port user charges at the ports of Cai Mep-Thi Vai seem to be twice (three times in some cases) higher than those of other ports in the Asian region. In this context, Japan would like to know whether the government has the intention of making further reductions in the charges.

ANSWER: Viet Nam is considering appropriate fees and charges.

4.6.6.2 Air transport

(Question17: Page 146, Paragraph 4.162)

Limited space availability at NOIBAI Airport's Cargo Terminal, especially space for warehousing, loading and un-loading, is one of the impediments for trade facilitation. Japan would like to know what kind of measures, if any, Viet Nam plans to take to improve the current situation.

ANSWER: The following measures have been taken to improve the situation:

- The existing Cargo Terminal is being expanded by the Airports Corporation of Viet Nam (ACV) to increase the capacity from 180,000 tons/year to 260,000 tons/year;
- A new Cargo Terminal is under construction by ALS Company with the capacity of 120,000 tons/year.
- A cargo warehouse has been established by ALS Company in Bac Ninh province. Cargos will be transported from Noi Bai Airport straight to the warehouse, easing the overload situation at Noi Bai Airport's Cargo Terminal.

4.6.7 Distribution services

Question18: Page 150, Paragraph 4.174

Regarding the statement "it appears that there is no nationwide implementing legislation to clarify the ENT criteria" in the Report by the Secretariat, the following questions are raised.

According to article 7 of the notice "08/2013/TT-BCT" issued by MOIT, "The setting up of retail establishments including the first retail establishments must abide by law regulations on state management for retail activities and be conformable with the related master plans of central-affiliated cities and provinces, where are expected for setting up of retail establishments." and "In case of setting up a retail establishment with area of less than 500m² in area planned for goods trading activities by central-affiliated cities and provinces and already finished construction of infrastructure, it is not required to perform provision on checking the economic demand in clause 2 of this Article (that is ENT)".

(1) What is the master plan?

(2) Where are the exact areas which meet the criterion "The areas planned for goods trading activities by central-affiliated cities and provinces"?

(3) What is the situation that meets "already finished construction of infrastructures"?

ANSWER: In Viet Nam, there are master plans approved specifically by the central affiliated cities or provinces for the socio - economic development of the city or province. The areas planned for goods trading activities can be found on these master plan or in reality (with the construction of infrastructure already finished) if the master plan has been carried out to some certain extent.

FOLLOW-UP QUESTIONS FROM JAPAN

Report by the Viet Nam (WT/TPR/G/287)

2 ECONOMIC DEVELOPMENTS AND TRADE POLICIES

2.2 Economic and Trade Policies

2.2.2 Implementation of WTO Accession Commitments

2.2.2.3 Trade in Services

(Question1: Page 15, Paragraph 2.43)

Japan understands that the licensing agency does not require any additional papers according to paragraph 3 Article 44 Decree 108/2006/ND-CP, but if foreign investors have any trouble at a local investment application acceptance window, is there any organization, other than the licensing agency, which can mediate the trouble between foreign investors and the agencies?

ANSWER: Pursuant to paragraph 3 Article 44 Decree No. 108/2006/ND-CP, the licensing agency does not require any additional papers if the application dossier is eligible.

In case any matter arising during the application of foreign investment procedures, which cannot be resolved by the local agencies, such matter may be referred to higher authorities for further guidance, e.g. the Prime Minister, the Ministry of Planning and Investment, or other line ministries.

2.2.3 Trade Policy Developments since WTO Accession

2.2.3.3 Recent Trade and Trade Related Policy Developments

2.2.3.3.2 Customs Modernisation

(Question2: Page 18, Paragraph 2.58)

When will the new Information system of Customs of Viet Nam be implemented in all customs offices?

ANSWER: The electronic customs procedures have been applied nationwide since early January 2013. The system includes registration for submission of electronic customs declarations. Customs processing includes automatic check and analysis of customs declarations.

Report by the Secretariat (WT/TPR/S/287)

3 TRADE POLICIES AND PRACTICES BY MEASURE

3.2 Measures Directly Affecting Imports

3.2.1 Import procedures and requirements

(Question3: Page 43, Paragraph 3.10)

(1) The report by Viet Nam (2.40. page 14) says "other that would remain under permanent exception", which seems to correspond to the products stated in the answer to our questions (1).

(2). Are these products and the context equivalent to the agreed context of Viet Nam's accession to the WTO, which is stated in the report of the WTO Secretariat?

(2) Japan understands that the MOH is finalizing the draft circular regulating the trading rights of FDI enterprises in the field of pharmaceuticals in Viet Nam. Will FDI be granted import rights in Viet Nam, regardless of being granted distribution rights in there? Japan would like to know when FDI will be granted import rights in Viet Nam?

ANSWER: In light of the draft Circular providing for implementation of export, import rights by pharmaceutical FDI enterprises, it is expected that FDI enterprises in the field of pharmaceuticals which satisfy the prescribed requirements would be allowed to import and export pharmaceuticals to/from Viet Nam. These import/export rights would be granted when the implementing guidelines (i.e. the said draft Circular) is officially promulgated, tentatively in the 4th Quarter of 2013.

4 TRADE POLICIES BY SECTOR

4.6 Services

4.6.6 Transport

4.6.6.1 Maritime services

(Question4: Pages 145-146, Paragraph 4.161)

Regarding Viet Nam's answer to Japan's Question 16, Japan would like to know the specific timeline or plan for the fees and the charges under consideration at the ports of Cai Mep - Thi Vai.

ANSWER: Talks with sea transportation companies and associations operating in the port of Cai Mep - Thi Vai have been held and the reduction of charges for ships of over 50,000DWT at the international port of Cai Mep - Thi Vai is being considered.

4.6.7 Distribution services

(Question5: Page 150, Paragraph 4.174)

Regarding Viet Nam's answer to Japan's question 18 "The area planned for goods trading activities can be found on these master plans or in reality with the construction of infrastructure already finished", please give some concrete examples that the construction of infrastructure already has finished.

ANSWER: In Viet Nam, there are master plans approved by cities/provinces to develop a certain area (i.e. for the purpose of urbanization) which entail the construction of high complex buildings for residence, office lease and trading purposes. When these master plans are implemented to some certain extent (buildings have already been built but not yet brought into use), it may be considered that the construction of infrastructure is finished. If foreign investors choose to set up a retail establishment with area of less than 500m² in these buildings (areas designed for trading purposes), it is not required to perform provision on economic needs test.

QUESTIONS FROM THE REPUBLIC OF KOREA

PART I: Questions Regarding the Secretariat Report

Page 39(Para2.35)

Vietnamese investors may obtain a business registration certificate under the Enterprise Law. For investment projects valued at less than $\text{đ}15$ billion and not in a conditional investment sector, no further formalities are necessary. Foreign investors may apply for an investment certificate, which will also serve as a business registration certificate. This certificate should normally be granted within 15 days. In addition, "investment registration" applies to foreign investment projects valued at less than $\text{đ}300$ billion and to domestic investment projects valued between $\text{đ}15$ billion and $\text{đ}300$ billion. All investment projects (domestic and foreign) worth more than $\text{đ}300$ billion as well as all projects in the conditional sectors are subject to an "investment evaluation", focusing on compliance with master plans for technical infrastructure, land use, construction, and the use of natural resources and minerals; compliance with land use requirements; the implementation schedule for the project; and environmental conditions. The investment evaluation should be completed within 30 days but the deadline may be extended up to 45 days. According to the Investment Law (Article 47), the National Assembly will determine the evaluation process and criteria on a case-by case basis for "important national investment projects" e.g. particularly large investment, in specific locations, or projects having a major environmental impact.

Question

1. In regard to the "investment evaluation", please provide additional information on the process, relevant laws or regulations, and specific requirements, if any, for foreign investors.

ANSWER:

Licensing authorities

The authorities who are authorized to issue investment certificate to Vietnamese and foreign-owned companies include (i) provincial People's Committees and Management Boards of industrial and export processing zones.

Licensing procedure

Depending on the size and the sector of investment, different licensing and registration procedures will be applied:

- i. Investment registration; or
- ii. Investment evaluation

Foreign investors investing in Viet Nam for the first time must have an investment project and carry out either registration or evaluation procedures, in order for an investment certificate to be issued.

Investment registration

Foreign investment projects with a total invested capital of less than VND300 billion (approximately USD15 million) not falling in a conditional sector are subject to "investment registration" and foreign investors of such projects must carry out the procedures for investment registration in order to be granted an investment certificate. The investment certificate also serves as the business registration of the corporate entity.

Domestic investment projects with a total invested capital from VND 15 billion to less than VND 300 billion are also subject to "investment registration". Subject to a request of the local investor, the Licensing Authority will issue an investment certificate to such investor.

Enterprises can subsequently register additional investment projects without the need to create a separate entity.

The procedure for "investment registration" is set out in Decree 108/2006/ND-CP. Accordingly, the investor must submit application documents for investment registration to the Licensing Authority. The Licensing Authority shall check the documents and issue the investment certificate to the investors within 15 working days of receiving the valid application.

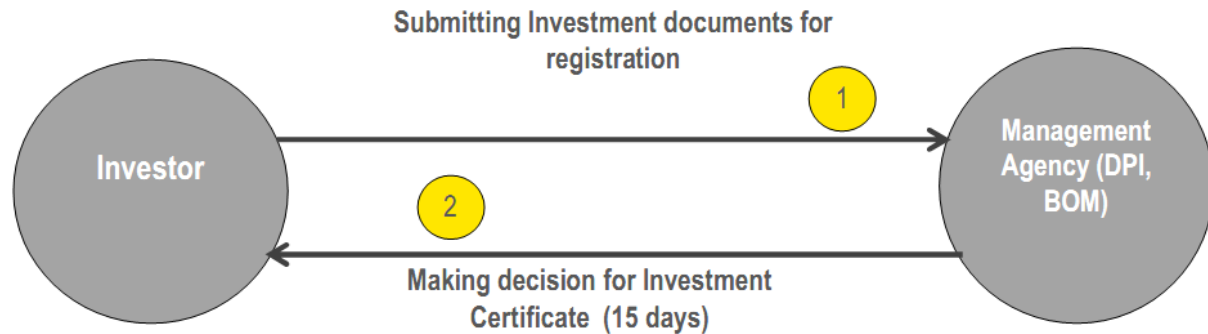


Chart 1: Investment Registration Procedures

Evaluation procedures

Any investment project with a total invested capital of VND300 billion (approximately USD15 million) or more or investment projects falling in conditional sectors must undergo "an investment evaluation" by the Licensing Authority and other relevant authorities. There are two different types of evaluation:

- i. Evaluation for investment projects regardless of total invested capital falling into conditional sectors; and
 - ii. Evaluation for investment projects with total invested capital of VND300 billion or more that do not fall into conditional sectors.
3. For the evaluation of investment projects with total invested capital of VND 300 billion or more, along with the application documents, the applicant must also submit an "economic-technical explanation" of the investment project to the Licensing Authority. This covers the economic-technical explanatory statement, objectives, scale, location, investment capital, implementation schedule, land use needs, and technological and environmental solutions of the investment project.
 4. For the evaluation of investment projects falling in conditional sectors, in addition to the application documents, the investor must also demonstrate compliance with requirements specific to that conditional sector.

When assessing the application documents, the Licensing Authority may liaise with other relevant Ministries and authorities in evaluating the proposed investment project. Items to be evaluated shall comprise:

- i. Compliance with master planning/zoning for technical infrastructure, master planning/zoning for land use, master planning for construction, master planning for utilization of minerals and other natural resources;
- ii. Land use requirements;

- iii. Project implementation schedule;
- iv. Environmental solutions.

The Law on Investment stipulates that the time-limit for evaluation of investment shall not exceed thirty (30) days from the date of receipt of a complete and valid file. In necessary cases, the above time-limit may be extended, but not beyond forty five (45) days.

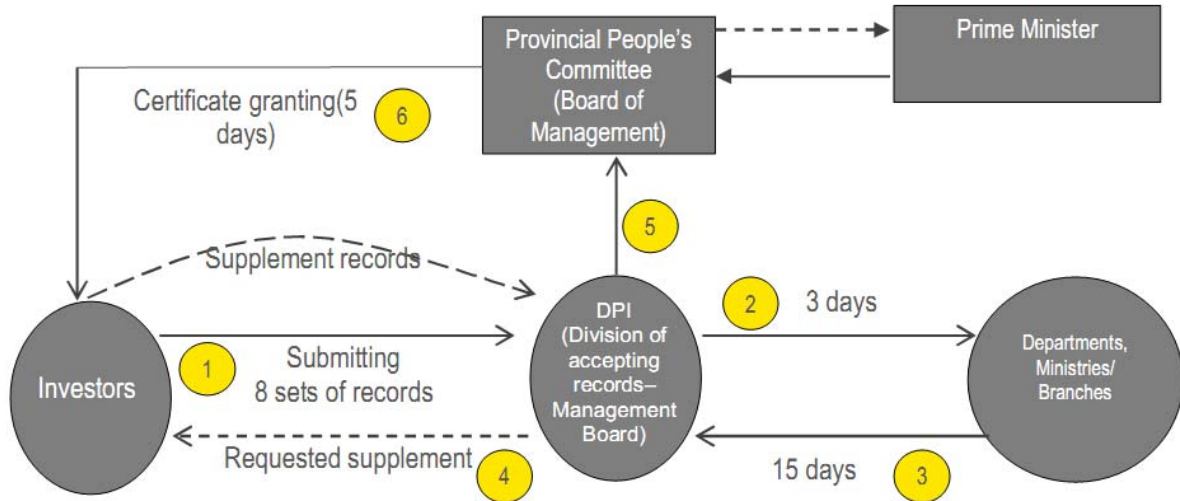


Chart 2: Investment Evaluation Procedures

Application dossier

In general, the following documents are required for the establishment of a 100% foreign-invested enterprises⁶:

- i. Request for the issuance of an investment certificate in the prescribed form
- ii. A draft charter of the company to be established
- iii. A list of investors in the prescribed format
- iv. A report of the financial capability of the investors
- v. An economic and technical explanation of the project "Feasibility Study"
- vi. An explanation of how the conditions will be satisfied
- vii. The investor's Certificate of Incorporation

Page 46 (Para3.21)

The difference between bound and currently applied MFN rates leaves some scope for flexibility in Viet Nam's tariff policy. In some instances, Viet Nam has implemented tariff reductions ahead of the committed timetable. Tariff cuts may also have been employed on occasion to reduce inflationary pressure in the domestic economy or to mitigate fluctuations in domestic energy prices. However, a number of tariff increases since 2008 seem primarily motivated by a willingness to afford higher protection to certain domestic sectors, e.g. to manufacturers of motor vehicles, meat producers, and the local steel industry. Although all tariff increases appear to have been

⁶ Detailed guidance on application dossier is available in Decree 108/2006/ND-CP dated 22/9/2006.

within limits set by Viet Nam's tariff commitments in the WTO, frequent changes in the applied tariff introduce uncertainty and may undermine the predictability of WTO Member's access to the Vietnamese market.

Question

2. Although the changes in the applied tariff have been within Viet Nam's tariff commitments, they seem to be inconsistent with Viet Nam's standstill commitment. Also, it is possible that these changes could reduce transparency within Viet Nam's tariff regime. Does Viet Nam have any plan to roll back such measures?

ANSWER: WTO does not require Members to be automatically bound at the applied MFN rates. Viet Nam always abides by its tariff commitments in WTO, specifically none of the applied rates exceed respective bound rates. Besides, the tariff adjustment and its reversal has always comply with a published and transparent process as required by the Law on Promulgation of legal documents in Viet Nam.

Page 57 (Para3.44)

Prior to accession, Viet Nam had eliminated foreign exchange restrictions on "dispensable and non-essential" import items and consumer goods, and "payment method" restrictions. However, in April 2010 the Ministry of Industry and Trade promulgated a long list of "non-essential" imported commodities and consumer goods not encouraged for import. The State Bank of Viet Nam subsequently instructed credit institutions to consider carefully or restrict the provision of foreign currency loans to finance imports of the listed items. The list was expanded in 2011, as Decision 1899 was replaced by Decision No. 1380/QD-BCT of 25 March 2011. Among the discouraged items are live animals, dairy products, sugar confectionary, fish and crustaceans, and table salt.

Question

3. The practice related to "non-essential imported commodities and consumer goods" seems to serve as a trade barrier. Please explain how it is consistent with Viet Nam's obligation under Article XI of GATT 1947.

ANSWER: In 2010, a series of policy measures were implemented for the purposes of macroeconomic stability, inflation control, and social welfare improvement. The list of the non-essential consumer goods not encouraged to import issued by the Ministry of Industry and Trade was not a legal document and only used as a recommendation for credit institutions when providing loans in the situation of limited ability in foreign currency.

As this list is only a reference document while the Law on Credit Institutions 2010 provides that commercial banks and credit institutions have full rights and are self-responsible for their business decisions and activities, it does not prevent banks and credit institutions from selling foreign currency to importers for the importation of the listed items. Therefore, the issuance of the list does not restrict imports and does not violate Viet Nam's WTO obligations.

Page 87(Para3.163)

In addition to the WIPO Convention, Viet Nam is party to a number of WIPO-related treaties. Viet Nam has yet signed the most recent treaties negotiated in WIPO, e.g. the Internet treaties (WCT, WPPT, Beijing Treaty) or the trademark procedural treaties (TLT, Singapore Treaty).

Question

4. According to the Secretariat Report, Viet Nam has not joined the WIPO Copyright Treaty (WCT), the WIPO Performances and Phonograms Treaty (WPPT) or the Beijing Treaty on Audiovisual Performances which are important treaties covering copyright and related rights for new technology. Does Viet Nam have any plan to become a Party to these treaties?

ANSWER: Viet Nam has been doing a feasibility study to determine a roadmap toward joining the WCT and WPPT treaties in an appropriate time.

Page 124 (Para4.104)

The 2002 Development Strategy until 2010 with orientation until 2020, set ambitious targets for common-type, special-purpose, and high-class vehicles with local-content of up to 60% and meeting over 80% of domestic demand in 2010, depending on the type of vehicle. At end-April 2013, none of these targets had been reached. The auto and spare parts production subsectors are entitled to special investment incentives. In the context of Viet Nam's auto development strategy to 2020, with a vision to 2030, in May 2013 the MOIT (Ministry of Industry and Trade) and MOF (Ministry of Finance) were working on proposals to submit to the Prime Minister regarding tax breaks and land-lease incentives for making auto production a key industry by 2020. Several crucial targets, including increasing exports and setting up an auto manufacturing and support hub in central Viet Nam, with total investment of 30 trillion (US\$1.46 billion), form part of this strategy. The strategy also aims to boost sales of cars made in Viet Nam, and expand the domestic industry's production capacity to 398,000 vehicles per year by 2020. The localization rate is expected to reach 50%-60% by the same year. The auto industry is expected to export 65,000 vehicles per year by 2020, along with a total export turnover of US\$4 billion from auto parts. The MOIT suggested, *inter alia*, a corporate income tax rate of 10% for the entire life of the project, and a 50% reduction of special consumption tax for auto projects that meet criteria on local-content ratios

Question

5. Please explain how the reduction of the special consumption tax for auto projects meeting criteria on local-content ratios is consistent with Viet Nam's obligations under Article III of GATT 1947 and Article III of the Agreement on Subsidies and Countervailing Measures.

ANSWER: Firstly, Viet Nam would like to explain that the Development Strategies are not legal documents. They only provide orientations or recommendations for development policies in certain industries. Based on these orientations and recommendations, the Government will set out concrete policies to develop the industries without violating the international commitments of Viet Nam.

PART II: Questions Regarding the Government Report

None.

QUESTIONS FROM NEW ZEALAND

REPORT BY THE WTO SECRETARIAT (WT/TPR/S/287)

SECTION III: TRADE POLICIES AND PRACTICES BY MEASURE

3.2. Measures Directly Affecting Imports

WT/TPR/S/287, p.57, para 3.44

Section 3 of the Secretariat report, page 57, para 3.44 notes that in 2010 and 2011 the Ministry of Industry and Trade promulgated long lists of 'non-essential' imported commodities and consumer goods not encouraged for import, which resulted in subsequent measures taken by other Government agencies such as instructions to banks to consider carefully or restrict the provision of foreign currency loans to finance imports of the discouraged items. New Zealand understands that additional measures were taken by other Government agencies to give practical effect to the lists.

1. Does the 2011 list of non-essential imported commodities and consumer goods not encouraged for import remain in effect? Or has Viet Nam issued a revised list?
2. How does the issuance of the 2010 and 2011 lists of commodities not encouraged for import, and the subsequent measures taken to give effect to these lists, align with Viet Nam's WTO obligations?

ANSWER: In 2010, a series of policy measures were implemented for the purposes of macroeconomic stability, inflation control, and social welfare improvement. The list of the non-essential consumer goods not encouraged to import issued by the Ministry of Industry and Trade was not a legal document and only used as a recommendation for credit institutions when providing loans in the situation of limited ability in foreign currency.

As this list is only a reference document while the Law on Credit Institutions 2010 provides that commercial banks and credit institutions have full rights and are self-responsible for their business decisions and activities, it does not prevent banks and credit institutions from selling foreign currency to importers for the importation of the listed items. Therefore, the issuance of the list does not restrict imports and does not violate Viet Nam's WTO obligations.

WT/TPR/S/287, p.58, para 3.49; (WT/TPR/G/287, p.14, para 2.41 and p.18, para 2.58)

Section 3 of the Secretariat report, page 58, para 3.49 notes that, according to Vietnamese businesses, the application of HS Codes is not always uniform across customs offices. New Zealand has also sometimes experienced difficulties assessing the impact of new regulations on agricultural commodity and other exports to Viet Nam in the absence of clear information based on HS Codes defining their scope of application.

3. How does Viet Nam plan to link customs valuation more reliably to HS Codes in future?
4. What measures will Viet Nam take to increase the use of HS Codes in new and amended measures focused on a particular commodity or group of commodities, to define the scope of application?

ANSWER: In order to restrict the deviation from proper application of HS Codes and in order to link customs valuation more reliably to HS Codes in future, on 05/8/2013, the Minister of Finance has signed Decision 1854/QD-BTC to approve the "Scheme to improve the capacity of the customs agency on the classification of goods and the determination of the customs value in 2020," which focuses on many solutions of construction and completion the legal document; structure of organization and human resources; advanced training in customs, building databases, investment in upgrading facilities and technical equipment, strengthen the international cooperation on classification of goods and customs value.

3.4 Measures Affecting Production and Trade

WT/TPR/S/287, p.66, para 3.86

WT/TPR/S/287, p.72, para 3.102

Section 3 of the Secretariat report, page 66, para 3.86 notes that Viet Nam notified 33 regular TBT measures to the TBT Committee of the WTO. Page 72, para 3.102 of the report notes that Viet Nam has made 42 regular notifications (and addenda to two of these) to the SPS Committee. New Zealand is aware of other measures that Viet Nam did not notify to these Committees, as well as measures that were notified after their entry into effect. These include lack of SPS notification of Viet Nam's 2010 decision to temporarily ban imports of fresh offal, and Ministry of Agriculture and Rural Development Circular 25/2010/TT-BNNPTNT (guidance on food hygiene and safety control for imported foodstuffs of animal origin); and delayed notification of Decree 38/2012/ND-CP guiding the implementation of a number of Articles of the Law on Food Safety some eight months after adoption and six months after entry into effect.

5. How will Viet Nam ensure timely notification of proposed new or amended SPS, TBT and other trade-related measures to the WTO in future, to enable meaningful consultation with trading partners and provide trading partners with adequate preparation time, in order to minimise potential disruption to trade?
6. In particular, what steps will Viet Nam take to ensure timely advance notification of, and meaningful consultation with trading partners on, further SPS, TBT and other measures required to implement the 2010 Law on Food Safety and Decree 38/2012/ND-CP?

ANSWER: According to the TBT Agreement, all national standards are voluntary to apply. Therefore, Members do not have obligation to notify all national standards, except for the standards that have legal presumption to become technical regulation. In respect of this type of standards, during the development of technical regulation, Viet Nam has notified the WTO of all the drafts of technical regulations of which the major requirements base on relevant standards for comments.

For Viet Nam's plan to finalize standards in 2013, please access this website: <http://www.vsqi.gov.vn/>.

Since 2007 after becoming Membership of WTO, Viet Nam has been fully implemented her notification obligations regarding SPS and TBT.

On SPS, Prime Minister had issued Decision 99/2005/QĐ-TTg dated 9 May 2005 to establish Viet Nam National Notification Authority and Enquiry Point to fulfill notification obligation in WTO/SPS Agreement. Network has formed between relevant Ministries to ensure the implementation. Ministry of Agriculture and Rural Development as coordinating roles of the network had issued Decision 1733/QĐ-BNN-TCCB dated 17 July 2005 and Decision 04/2008/QĐ-BNN dated 10 January 2008 on organization structure, functions and coordination mechanism of National Notification Authority and the networks in relevant Ministries. In accordance with the regulation, i.e. Article 7 of Decision 04/2008/QĐ-BNN, it requires drafting agency, as soon as the available of final draft, to provide at least 70 days to notify to WTO and reasonable period to response to comments from WTO Members.

SECTION IV: TRADE POLICIES BY SECTOR

4.3 Fisheries

WT/TPR/S/287, p108, para 4.64

The Secretariat report notes some support programmes introduced by the Vietnamese government to support the fisheries sector, including fuel subsidies in 2008, reportedly on a temporary basis. In Section 4 of the report, p.108 para 4.62, a Vietnamese Government report from 2009 indicates

that the Government of Viet Nam had not implemented measures to cope with overfishing and destructive fishing in the country, and overfishing remained a serious problem.

7. Can Viet Nam provide greater detail on current subsidies, support, and incentives provided to its fisheries sector including their magnitude over time, the recipients and how these support programmes are administered?
8. Can Viet Nam please comment on how it reconciles subsidy programmes for the capture fisheries sector — which encourage enhanced fishing capacity and effort — with its attempts to address the serious problems of overfishing identified by the government in the sector?

ANSWER: The fisheries sector of Viet Nam consists of artisanal and small scale fishermen, who belong to one of the poorest communities in our country. Therefore, we need to develop appropriate policies for fishing sector in order to achieve development targets as well as to address poverty reduction and livelihood in a sustainable manner. In this regard, we are of the view that maintaining certain kinds of subsidies is essential for low income, poor resources or livelihood fishing activities.

QUESTIONS FROM PAKISTAN

1. International competitiveness seems to have come under threat in recent years , including efficient re-allocation of resources in the economy as a whole, to the detriment of total factor productivity, and in terms of labour productivity, as according to the Secretariat Report, the contribution of total factor productivity to the growth of Viet Nam's factor-driven economy appears to have collapsed.

QUESTION 1: What measures Viet Nam is taking to improve its competitiveness, esp. for raising its labour productivity?

ANSWER: Measures to improve competitiveness, raising labour products can be found in the Decision No. 339/QĐ-TTg of the Prime Minister on February 19th 2013 on approval of comprehensive strategy to restructuring the economy to enhance competitiveness and quality of growth for more in-depth information, which can be found online. Otherwise we will provide Pakistan with the translation later.

2. Viet Nam's simple average MFN tariff has declined significantly, from 18.5% in 2007 to 10.4% in 2013. However, differences between bound and applied rates have been used to provide additional protection to selected industries since 2008. Similarly, as noted by the Secretariat Report, valuation differences in the tax base may provide an advantage to local producers.

QUESTION 2: Does Viet Nam have plans to reduce/eliminate the use of water, and differences in valuation, for protection to selected industries as pointed out by the Secretariat Report?

ANSWER: Could Pakistan clarify the question?

3. Average applied MFN tariff protection for industrial products has been cut by almost half. Nevertheless, tariffs on apparel and clothing, footwear, ceramic products, automobiles and motorcycles remain relatively high compared to those on other manufactures. Reference prices have been used for risk assessment purposes for imports of certain products (e.g. apparel and clothing, footwear). Domestic support to manufacturing activities is provided in the form of tax and non-tax incentives, as well as government-procurement practices, and a buy-locally campaign entitled "Vietnamese people use Vietnamese products".

QUESTION 3: Could Viet Nam please explain if it has plans to reduce higher tariffs on the products pointed out, as well as reducing/eliminating domestic support aimed at encouraging "Vietnamese people use Vietnamese products".?

ANSWER: The campaign "Vietnamese people use Vietnamese products" is aimed to raise the awareness of domestic consumers on manufacturing capabilities, product quality, service, enterprises from Viet Nam. It targets the products manufactured and assembled within the territory of Viet Nam pursuant to the law of Viet Nam. Such programs encourage the use of goods and service produced in Viet Nam and from FDI enterprises located in the territory of Viet Nam.

4. The Secretariat Report points out significant weaknesses including a relatively incomplete transition to a market economy, the quality and sustainability of growth, persistent macroeconomic instability, the speed in resolving problems in a number of small weak banks, addressing systemic risks facing the financial sector (i.e. level of non-performing loans, liquidity crises, stability of foreign reserves), and delays in SOE reforms. The Secretariat Report also notes that the authorities remain concerned about potential job losses and corporate insolvencies after free rein is given to market forces in sensitive activities dominated by SOEs.

QUESTION 4: What strategy has been adopted to rectify the structural deficiencies as noted?

ANSWER: To rectify the structural deficiencies as noted, Viet Nam's Prime Minister has approved three Master Plans as follows:

- Master Plan on Economic Restructuring attached to change of growth model towards improvement of quality, efficiency and competitiveness for the period 2013-2020 (attached to Decision No. 339/QD-TTg dated 19th February, 2013);
 - Master Plan for restructuring state-owned enterprises, with the focus on state-owned corporations and groups for the period of 2011-2015 (attached to Decision No. 929/QD-TTg dated 17th July, 2012);
 - Master Plan for restructuring the system of financial institutions for the period of 2011-2015 (attached to Decision No. 254/QD-TTg dated 1st March, 2012).
5. In agriculture, technical change has also had a major impact on production, for example the increased use of machines reduced labour requirements.

QUESTION 5: Could Viet Nam explain where the labour rendered surplus by mechanisation has been absorbed?

ANSWER: Surplus labor are kept to work in high technical agriculture sector or moved to industry and service sectors under vocational training. Each year, it is estimated that 1 million labor to be provided with vocational training received.

6. The Cotton Development Master Plan for 2015-20 sets targets for areas (in this case, an increase in area planted) and states that assistance will be provided through low-interest loans and improved infrastructure.

QUESTION 6: What production/acreage targets have been set and in what time frame?

ANSWER: Viet Nam's Cotton Development Program until 2015, with orientation to 2020 sets targets as follows:

1. Target until 2015:

- a) The area reaches 30,000 ha, including 9,000 ha irrigated areas;
- b) Average yield reaches 1.5 tons/ha, irrigational yield reaches 2.0 tons/ha;
- c) Cotton fiber productivity reaches 20,000 tons.

2. Orientation to 2020;

- a) The area reaches 76,000 ha, including 40,000 ha irrigated areas;
- b) The average yield reaches 2.0 tons/ ha, irrigational yield reaches 2.5 tons/ha;
- c) Cotton fiber productivity reaches 60,000 tons.

However, because of the reduction of world cotton price, the area and productivity of cotton have not achieved target as set out in schedule.

7. It has been reported that, since 1986, fisheries catch has exceeded the maximum sustainable yield. In 2009, a number of problems were identified that affected the sustainability of fishing in Viet Nam: (a) a lot of fishing gear did not comply with regulations, such as mesh size, leading to high discards and depletion of juveniles; (b) inappropriate fishing techniques, such as explosives and chemicals were being used; (c) overcapacity in inshore waters; and (d) pollution by fishing boats and waste management in fishing villages. According to a 2009 report, the Government of Viet Nam had not implemented measures to cope with overfishing and destructive fishing in the country, and overfishing remained a serious problem particularly excessive catches of crustaceans, cutter-fish, and octopus.

QUESTION 7: Could Viet Nam please explain if it is seized of the magnitude of the problem at hand, and what measures are being taken to remain within the maximum sustainable yield parameters?

ANSWER: For the purpose of harvesting maximum sustainable yields, the Government of Viet Nam has been implementing sectoral strategies, management and action plans as follows:

- Decision 1690/QĐ-TTg dated 16/9/2010 of the Prime Minister approving the strategy for fisheries development until 2020;
- Decision 1445/QĐ-TTg dated 16/8/2013 of the Prime Minister on the approval of masterplan for the fisheries development by 2020 with a vision toward 2030, in which the number of coastal vessels is targeted to reduce by 12% in 2020 and expected a further reduction to 95,000 vessels by 2030.

Viet Nam commits to fully implement relevant international rules on sustainable management and use of marine resources.

Implementation of the Agreement relating to the Conservation and Management of Straddling Fish Stocks and Highly Migratory Fish Stocks.

Viet Nam is the process of joining the Western and Central Pacific Fisheries Commission (WCPFC);

Viet Nam has issued Decision 188/QĐ-TTg dated 13/2/2012 of the Prime Minister approving the program of conservation and development of marine resources until 2020; Decision 1479/QĐ-TTg dated 13/10/2008 of the Prime Minister specifying plan for marine conservation in Viet Nam by 2020, in which 16 national marine conservation areas are expected to be established in Viet Nam.

The issuance of Decree 80/NĐ-CP dated 8/10/2012 of the Government on the management of fishing ports, storm shelter for fishing boats. This Decree provides a sound legal framework for regulating IUU.

ADDITIONAL QUESTIONS FROM PAKISTAN

a. Could Viet Nam give details about the "regulatory impact assessment" carried out? Is there a specific template for carrying out such assessments? Viet Nam is requested to share the details of the methodology please.

ANSWER: The regulatory impact assessment is provided for in numerous articles of relevant legal normative documents such as the Law on the promulgation of legal normative documents in 2008, the Decree No. 24/2009/ND-CP dated 5 March 2009 guiding the implementation of the Law on the promulgation of legal normative documents and the Decree No. 63/2010/ND-CP on control of administrative procedures. Pursuant to these legal documents, a lead drafting agency is responsible for conducting regulatory impact assessment and prepare regulatory impact assessment reports during the drafting stages. A typical regulatory impact assessment report includes highlight of subject matters to be addressed and the proposed solutions, cost/benefit analysis of the proposed solutions (paragraph 2, Article 33 of the Law on the promulgation of legal normative documents).

In addition, in 2011, the Ministry of Justice of Viet Nam issued the regulatory impact assessment Handbook, which includes detailed techniques and methodology for public official use.

b. What administrative measures (apart from criminal and civil measures) are applied for IPR enforcement?

ANSWER: Administrative measures applicable to the acts of infringements causing damages to society namely, causing loss and damage to society and consumers relating to counterfeit intellectual property goods. Administrative penalties include:

Principal penalties:

- Compulsory termination of infringement act;
- Warning or monetary fines with amount that complies with the law on handling of administrative violations.

Additional penalties:

- Confiscation of intellectual property counterfeit goods, raw materials and materials, and instruments used mainly for production of or trading in such intellectual property counterfeit goods;
- Suspension of business activities for a fixed period in the sector in which the infringement was committed.

Measures for remedying consequences:

- Compulsory destruction, distribution outside channels of commerce or use for non-commercial purposes of intellectual property counterfeit goods as well as raw materials and materials, and instruments used mainly for production of or trading in such intellectual property counterfeit goods, provided that such destruction, distribution or use will not affect the exploitation of rights by intellectual property right holders;
- Compulsory transportation out of the territory of Viet Nam of transit goods infringing intellectual property rights (which turn out to be imposed or distributed in domestic market) or compulsory re-export of imported intellectual property counterfeit goods and imported materials and raw materials, and instruments used mainly for production of or trading in such intellectual property counterfeit goods after the infringing elements have been removed from such goods.

Other appropriate measures to be applied in each specific cases by competent authorities:

- Compulsory modification or addition of indications on industrial property
- Other measures as agreed upon or proposed by involved parties not inconsistent with the Law on Intellectual Property, not affecting the interests of a third party, consumers and the society, and accepted by a person with sanctioning competence.

QUESTIONS FROM THE RUSSIAN FEDERATION

1) We would like Viet Nam to inform us on the rules of origin that are used in the field of Safeguard, anti-dumping and countervailing measures.

ANSWER: Viet Nam is currently applying two types of Certificate of Origin (C/O): preferential and non-preferential. Our regulations do not have specific provisions that provide for a separate C/O to be used for safeguard, anti-dumping and countervailing measures. In such cases, Viet Nam applies non-preferential C/O.

2) According to the clause 3.56 of the section mentioned above safeguard measure may be in place for a total of 10 years. Can Viet Nam explain how it is compliant with the WTO rules and in particular with clause 3 of Article 7 of the WTO Agreement on Safeguard Measures?

ANSWER: Viet Nam is aware that according to Article 7.3 of the WTO Agreement on Safeguards, the total duration of application of a safeguard measure including the period of application of any provisional measure, the period of initial application and any extension thereof, shall not exceed eight years. However, the WTO Agreement on Safeguard also has specific provisions for developing countries which are stipulated in Article 9. Article 9.2 provides that "*A developing country Member shall have the right to extend the period of application of a safeguard measure for a period of up to two years beyond the maximum period provided for in paragraph 3 of Article 7.*" Therefore, the total maximum duration of a safeguard measure applied by a developing country is up to 10 years. According to the country classification of World Bank, Viet Nam is a developing country.⁷ This is also consistent with Viet Nam's WTO accession in which Viet Nam presented itself to the Members as a low-income developing country, and it was within this context that its accession was considered.

3) Can Viet Nam provide reasoning for the absence of Viet Nam subsidy notifications to the WTO Secretariat since 2007, under article 25 of the WTO Agreement on subsidies and countervailing measures?

ANSWER: Due to human resource constraint and limited capacity in collecting and analyzing statistical data, Viet Nam hasn't provided the updated notification on subsidies. However, Viet Nam has been drafting the notification on subsidies applied in the period post 2007 and shall submit to the WTO Secretariat at as soon as possible.

⁷ <http://data.worldbank.org/about/country-classifications/country-and-lending-groups> and World Bank list of economies (July 2013).

QUESTIONS FROM SINGAPORE

PART I: QUESTIONS REGARDING THE SECRETARIAT REPORT

I. ECONOMIC ENVIRONMENT

Page 22 (Para 1.15)

1. Singapore understands that Viet Nam is undertaking tax reforms presently. We would appreciate if Viet Nam could clarify what tax incentives for enterprises were passed in 2013. For greater clarity, we would appreciate if Viet Nam could provide a list of tax incentives that are in existence currently or have been announced to be rolled out in future, as well as a description of the developmental intent behind these incentives, please.

ANSWER: According to the Resolution 02/NQ-CP dated 07/01/2013 of the Government regarding solutions to overcome difficulties for businesses, support market, resolve Non-performing Loan: corporate income tax payable was deferred by: 6 months for the amount originally due by the first quarter 2013; and by 3 months for the amount originally due by the second quarter and the third quarter. VAT payable deferral was for 6 months for amount originally due in January, February and March 2013. Eligible entities included small and medium enterprises, labor-intensive enterprises in some sectors and enterprises operating in housing business.

II. TRADE POLICY REGIME: Framework and objectives

Page 38 (Para 2.31)

2. Singapore notes that Viet Nam concluded bilateral trade agreements with 40 partners prior to Viet Nam's WTO accession. We would appreciate if Viet Nam could share a list of all the countries that have signed such a bilateral trade agreement with Viet Nam.

ANSWER: Before accession to the WTO, Viet Nam had signed 40 bilateral trade agreements with different partners. Most of these "first generation" agreements were less than 10 pages with very simple commitments. The most important target of signing bilateral agreements during that time was to grant and receive the MFN status. These agreements primarily contain provisions on MFN, payments (by freely convertible currencies), facilitation of each other's participation in trade fairs and establishment of Joint Committees. After becoming a WTO member state in 2007, Viet Nam only signed one more trade agreement with Angola (2008) with the same format with the first generation agreements.

The Viet Nam – US bilateral trade agreement (2000) was the only exception which stood out of the "first generation" agreements. It was far more comprehensive than the others in the list, which includes a wide range of market liberalization commitments: MFN treatment, tariff reduction, the easing of barriers to services, IPR protection and investment protection.

List of countries that Viet Nam signed bilateral trade agreements with (before WTO accession)

No.	Name of countries	Year of signature
1.	Afghanistan	2005
2.	Algeria	1994
3.	Bangladesh	1996
4.	Brunei	2001
5.	Bulgaria	2001
6.	Cambodia	1998
7.	China	1991
8.	Congo	2002
9.	Czech	2004
10.	Finland	1978
11.	Indonesia	1995
12.	Iran	1994

No.	Name of countries	Year of signature
13.	Jordan	1997
14.	Democratic People's Republic of Korea	2002
15.	South Korea	1993
16.	Kuwait	1995
17.	Laos	1998
18.	Lebanon	2003
19.	Libya	1983
20.	Malaysia	1992
21.	Mongolia	1999
22.	Morocco	2001
23.	Mozambique	2003
24.	Myanmar	1994
25.	Namibia	2003
26.	Nigeria	2001
27.	Oman	2004
28.	Pakistan	2001
29.	Palestine	1994
30.	The Philippines	1978
31.	Saudi Arabia	1994
32.	South Africa	2000
33.	Singapore	1992
34.	Sri Lanka	1978
35.	Syria	1994
36.	Tanzania	2001
37.	Tunisia	1994
38.	The United States	2000
39.	Yemen	1996
40.	Zimbabwe	2001

Page 39 (Para 2.33)

3. Singapore notes that the prohibited and conditional business sectors listed in Decree No. 59-2006-ND-CP of 12 June 2006 are currently being reviewed. We would appreciate if Viet Nam could indicate when this review would be completed, and provide more information on the review.

ANSWER: The Decree 59/2006/NĐ-CP dated 12 June 2006 stipulates only the framework conditions that are of comprehensive nature on goods and services banned from business, subject to business restriction or to conditional business. The lists of the goods and services and the conditions for trading these goods and services are promulgated in the respective sectoral legal documents. Once there are amendments or supplements of the respective sectoral legal documents, these amended or supplemented legal documents will be enforced.

Page 39 (Para 2.34)

4. Singapore understands that investment admission is conditional in (i) sectors having an impact on national defence and security, social order and safety, and public health; (ii) banking and finance; (iii) recreational services; (iv) education and training; (v) real estate, (vi) culture, information, press, and publication; and (vii) surveying, prospecting, exploration and mining of natural resources. In financial services and legal services, investment is also regulated under specific laws, i.e. the Law on Credit Institutions, the Law on Insurance Business, the Law on Securities, and the Law on Lawyers (as amended in 2012). We would appreciate if Viet Nam could elaborate further on these conditions. Are these conditions publicly available or are they applied on a case-by-case basis?

ANSWER: According to the Law on Lawyers (amended in 2012), Foreign Lawyer Organizations shall not provide legal service in Vietnam except as a foreign lawyer organization, being an organization of practicing lawyers established in any commercial corporate form in a foreign country by one or more foreign lawyers or law firm, and only through the following forms:

- Branches of foreign lawyers organizations;

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- Wholly foreign limited liability law firm;
 - Joint venture limited liability law firm;
 - Partnerships between foreign lawyer organization and Vietnam law's law partnerships.

Director of foreign law firms are foreign lawyer or Vietnamese lawyer.

Commitment and guarantee that there are at least two foreign lawyers, including Branch Manager, Director of foreign law firms presenting and practicing in Vietnam for 183 days or more over a period of twelve consecutive months.

Foreign lawyers' organizations are not allowed to:

- Participate in legal proceedings in the capacity of defenders or representatives of their client before courts of Vietnam;
- Participate in legal documentation and certification services of the laws of Vietnam
- Commercial presences of foreign lawyers organizations are not permitted to make consultations on Vietnamese law unless the consulting lawyers have graduated from a Vietnamese law college and satisfy requirements applied to like Vietnamese law practitioners.

These conditions are statutorily and they are publicly available.

In securities services, the legal documents have specified the conditions of organization, activity, and scope of service provided to organizations involved in providing services on the securities market. These conditions are publicized in Securities Law No. 70/2006/QH11, Law amending and supplementing a number of articles of the Securities Law No. 62/2010/QH12 and guiding documents.

Regarding the banking and financial services

Regulations on conditions to be licensed to operate in the financial and banking sectors are stipulated in the Law on Credit Institutions issued in June 2010 with effect from 1 January 2011 (Law on Credit Institutes 2010) and are specified in the Circular 40/2011/TT-NHNN dated 15 December 2011 regulating the licensing, organization and operation of commercial banks, branches of foreign banks, representative offices of foreign credit institutions and other foreign organizations having banking activities in Vietnam. (Article 20 of the Law on Credit Institutions 2010; Article 10, Article 11 of Circular 40 regulates the conditions to venture banks, 100% foreign-owned banks, branches of foreign banks licensed to operate). As legal documents, these conditions shall be generally applicable to all similar cases.

The legal documents are being made public and accessible for reference at the State Bank's website: <http://www.sbv.gov.vn>.

Page 40 (Para 2.36)

5. Singapore is encouraged that Viet Nam has made significant movement towards equalizing the treatment accorded to local and foreign investors. We note that current regulations do not specify the treatment of Viet Namese-owned businesses acquired by foreign-owned (49% or more) enterprises. Thus, while some local licensing authorities may require the business registration certificate of an acquired business to be replaced by an investment certificate, others may demand an investment certificate in addition to the registration certificate, or only amendment of the business registration certificate. We would appreciate if Viet Nam could provide greater clarity on the necessary regulations for Vietnamese-owned businesses acquired by foreign-owned enterprises, so that there is greater certainty for both the authorities and the investors.

ANSWER: Please refer to the following legal documents:

- Article 13 Government Decree 102/2010/ND-CP dated 1st October, 2010 providing detailed guidance on several articles of the Enterprise Law.
- Article 56 Government Decree 108/2006/ND-CP dated 22nd September, 2006 providing detailed guidance on several articles of the Investment Law
- Decision 88/2009/QD-TTg dated 18th June, 2009 on regulations of capital contribution, purchase of shares by foreign investors in Viet Nam's businesses.
- Decision 55/2009/QD-TTg dated 15th April, 2009 on the ratio ownership of foreign investors in Viet Nam stock market.

Page 40 (Para 2.38)

6. Singapore notes that Viet Nam allows land to be leased and the duration of land-lease agreements should not exceed 50 years. The Government may also grant land leases with an initial duration of up to 70 years for certain projects. We would like to understand whether there are plans to extend the duration of the current commercial lease term held by foreign investors beyond 50 years, to encourage longer-term investments in Viet Nam's real estate sector. Would the Viet Nam government consider measures to guarantee the convertibility of VND-USD currency to large developers to equip them with greater confidence to embark on large-scale investments?

ANSWER: Plan to extend the duration of the current commercial lease term held by foreign investors beyond 50 years is presently not put into consideration.

According to the Law on Investment and Decree No.108/2006/ND-CP Providing guidelines for a number of articles of Law on Investment, investors can buy foreign currency at authorized credit institutions to meet the current account transactions, capital transactions and other transactions in accordance with regulations on foreign exchange management.

With a managed-floating exchange rate regime and flexible solutions for market operation, Vietnam's foreign exchange market is relatively stable; the system of credit institutions has met the foreign currency demand of enterprises including foreign invested enterprises, ensuring the international solvency of the economy in general as well as the rights of investors to buy foreign currency at authorized financial institutions to meet the legitimate needs of each investor.

In the context of having difficulties in maintaining and supplementing state reserves, the government's consideration and ensuring the balance of foreign currency for foreign investment projects is only be taken in very special case and only at a certain percentage of guarantee when the supply and demand in the foreign exchange market are not sufficient enough to meet the legitimate needs of foreign investors. This is important to ensure the harmony on the interests of investors and the country.

Page 40 (Para 2.40)

7. Singapore notes that Viet Nameese-based enterprises wanting to invest abroad would require prior approval from the Ministry of Planning and Investment. We would be grateful for Viet Nam's clarification on the types of investment abroad that require applications for approval. Would this also apply to Viet Nameese-based investors that are natural persons? We note that investments above a certain size also require the approval of the Prime Minister. We would appreciate if Viet Nam can provide more information about the types of investments that require approval from the Prime Minister.

ANSWER: All types of investment abroad are licensed by the Ministry of Planning and Investment.

Article 9 of Government Decree 78/2006/ND-CP dated August 09, 2006 providing guidance for offshore direct investment enlists types of investment that require approval from the Prime Minister, including:

1. Investment projects in banking, insurance business, financial, credit, journalism, radio or television broadcasting or telecommunications domains, which are funded with VND 150 billion or more of state capital, or VND 300 billion or more of capital of other economic sectors.
2. Investment projects undefined in paragraph 1 of this Article, which are funded with VND 300 billion or more of state capital, or VND 600 billion or more of capital of other economic sectors.

III TRADE POLICIES AND PRACTICES BY MEASURE

Page 83 (Para 3.143)

8. Singapore notes that Vietnam has not submitted periodic reports to the WTO for the purpose of transparency, on the status of its equalization programme or the reform of equitized enterprises, as indicated in the accession documents. We would appreciate if Vietnam could clarify whether there is any plan to submit such reports going forward. Following Vietnam's policy shift to reform state-owned-enterprises (SOEs) and introduction of a competition policy, we would also like to understand the transparency and anti-competitive measures that are put in place to ensure foreign investors and/or companies are not marginalised by SOEs, as well as the steps to reduce the involvement of SOEs in the information and communications technology (ICT) sector.

ANSWER: Viet Nam's Prime Minister has approved the Master Plan for restructuring state-owned enterprises, with the focus on state-owned corporations and groups for the period of 2011-2015 to help improve corporate governance (attached to Decision No. 339/QD-TTg dated 19th February 2013).

Pursuant to this Master Plan, there are now more than 100 plans approved by the Prime Minister and publicly available.

IV TRADE POLICIES BY SECTOR

Page 136 (Para 4.130)

9. Singapore notes that the Viet Nam Asset Management Company (VAMC) has been established as part of efforts to resolve bad debt. We wish to understand the plans to develop a policy framework to allow foreign investors, including real estate companies, to buy and develop the non-performing assets in Viet Nam.

ANSWER: Regarding the legal framework, Vietnam has established a legal basis for foreign investors to buy non-performing debts from credit institutions. Specifically, according to the Decision No.59/2006/QD-NHNN dated 21 December 2006 of the Governor of the State Bank of Viet Nam promulgating the regulation on debt purchase and sale of the credit institutions, debt buyers are domestic and **foreign** organizations and individuals wishing to purchase debts from debt sellers to become new owners of the debts.

For cases where foreign investors buy non-performing debts from VAMC:

VAMC's official operation on 26 July 2013 will accelerate the settlement of non-performing loans. VAMC's activities will provide opportunities for foreign investors to participate in the market of non-performing debts. Foreign investors can access and get information on purchasing non-performing debts through the services provided by VAMC such as advisory services, brokerage, and asset and debt sales. More importantly, foreign investors can directly buy and sell non-performing debts and asset provided that such non-performing debts will be fully completed with legal papers and documents after they are purchased by VAMC from credit institutes.

Principle of handling Non-performing Loans (NPLs) is defined to mobilize all social resources to handle non-performing debt of the system of credit institutes and the limitation of capital budgets for the disposal NPLs of credit institutes. Therefore, the participation of all economic sectors, especially foreign investors is very important to enhance additional resources for handling non-performing debts of credit institutes. The credit institutes are also required to be active in

supervision, debt recovery, secured asset disposals, and selling loans to asset management companies, debt trading companies and other organizations and individuals. Thus, the Vietnamese government encourages domestic and foreign investors, along with credit institutions, to participate in the sale and purchase of non-performing debts.

Foreign investors buying bad loans must comply with the provisions of the law on debt trading, foreign exchange control and related laws, especially the laws on land, houses in the purchase of the debt with assets secured by land.

Pages 143 – 144 (Section 4.6.6.1 Maritime Services); Page 12 (Para 29)

10. Singapore notes that the service sector comprises the largest sector of Viet Nam's economy, and that increasingly higher fees and surcharges on foreign firms in Viet Nam's overseas shipping market have seemingly affected export competitiveness. We also note that Viet Nam has the highest density of vessel traffic globally and acts as the gateway to the sea for landlocked neighbouring countries such as Lao PDR and the hinterlands, including north-western Thailand and south-eastern China. We note that the overseas cargo shipping market is currently dominated by foreign firms. From the Secretariat's report, it appears that the domestic shipping fleet is not yet able to serve and fulfill the demands of longer international shipping. In this context, Viet Nam's Ordinance on Foreign Exchange of 13 December 2005, and related Decrees, stipulates that "any transaction, payment, listing, advertisement" is to be performed in Viet Nameese Dong. Such a requirement is, on a practical level, not feasible for the international shipping industry for the following reasons:

- a) Most, if not all, international shipping transactions are denominated in US dollars, regardless of where the contract is signed and where the contracting party is, i.e. regardless if contract is done in Viet Nam or party is based in Viet Nam.
- b) Even if the shipping lines quote only those parts of the contract that are invoiced or payable in Viet Nam in Viet Nameese Dong, this can lead to confusion over the correct applicable rate because the freight charges agreed in the transport contract with the customer remain quoted in US dollars.

We would like to request if Viet Nam is reviewing its Ordinance on Foreign Exchange of 13 December 2005, and related Decrees, on "any transaction, payment, listing, advertisement" to be performed in Vietnamese Dong.

ANSWER: Viet Nam authorities are in the process of reviewing this regulation.

Page 147 (Para 4.165)

11. Singapore notes that foreign investors have been allowed to participate in airport development and modernisation projects through various partnership models since 2011. Aviation is a top priority for development since a strong aviation market is vital for growth. We would appreciate if Vietnam could clarify the following questions:

- a) How can companies from non-ODA (official development assistance) donor countries participate in Viet Nam's airport projects?
- b) What are the incentives, if any, to encourage foreign investors to participate in these projects?

ANSWER: Viet Nam encourage all foreign investors to participate in these projects. Government authorities concerned will explore more possibilities of incentives and make proposal to the Government for approval.

Page 150 (Para 4.174)

12. Singapore notes that an Economic Needs Test (ENT), applicable to foreign investors, is compulsory for any retail outlet to be established beyond the first one. We would

appreciate if Viet Nam could provide greater clarity on the criteria and application of ENT to foreign invested companies, e.g. its application to companies with only minority foreign ownership.

ANSWER: Pursuant to Circular 08/2013/TT-BCT the Provincial People's Committee decides on the establishment of an Economic Needs Assessment Committee. The sequences, procedures and membership of the Economic Assessment Committee are also regulated in the above mentioned Circular.

The Provincial People's Committee is the highest administrative body in a province, responsible for the activities of the Economic Needs Assessment Committee according the laws and regulations and ensures the neutrality in the assessment. In fact, the Economic Needs Assessment Committee does not include domestic distributors. In principle, Economic Needs Assessment Committee protects the interests of all enterprises (no differentiation if domestic or foreign one). In the recent time, the decisions made by the Economic Assessment Committees have been in favor of the foreign distributors.

The Law on Investment treat the companies with only minority foreign ownership the same as other foreign invested companies.

PART II: QUESTIONS REGARDING THE GOVERNMENT REPORT

Fiscal Policy (Bộ Tài chính)

Page 9 (Para 2.12)

13. Singapore notes that Viet Nam is in the midst of a comprehensive tax reform process aimed at creating a more favorable business environment for investors in Viet Nam and that corporate income tax will be reformed with the rate being gradually reduced under an appropriate roadmap. We note however that there are discrepancies between the taxes levied by the provincial and central governments. There have been instances where provincial governments provided tax exemptions to businesses, but these exemptions were not recognised by the central government, who then sought to recover the uncollected taxes. We would appreciate if Viet Nam could provide further clarification on the tax policy.

ANSWER: In accordance with relevant laws of Vietnam, National Assembly is empowered to promulgate tax policies (in the form of laws). Both the central government and local governments must comply with the provisions of the tax laws enacted by the National Assembly.

Trade in Services

Page 15 (Para 2.46)

14. Singapore notes that Viet Nam had removed restrictions on deposit raising activities in Vietnamese Dong (VND) of foreign bank branches and moved towards allowing foreign banks to establish 100% foreign-owned subsidiaries in Viet Nam. We would like to understand Viet Nam's plans to issue more banking licenses to encourage foreign banks to establish their subsidiaries in the country.

ANSWER: According to WTO commitment, Viet Nam has committed to allow for establishment of a bank with 100% foreign capital from 1/4/2007. Until now, there are five 100% foreign capital bank licensed to operate in Vietnam.

According to the Secretariat Report, Viet Nam at the present (May 2013) has various presence of different banks (5 commercial state banks, 2 policy banks, 34 commercial banks, 4 joint venture banks, 5 100% foreign capital banks , 53 branches of foreign banks (including 4 branch is conducting the procedure to terminate operations in Vietnam). In the upcoming time, Viet Nam will continue to consider the establishment of 100% foreign bank, in associated with the multilateral and bilateral commitments.

QUESTIONS FROM SWITZERLAND

Report by the Secretariat

3 Trade Policies and Practices by Measure

3.2. Measures directly affecting imports

3.2.1 Import procedures and requirements

Para. 3.10 of the Secretariat's report, as well as para. 2.40 of the report by the government of Viet Nam, state that Viet Nam had agreed to grant full import trading rights on par with Vietnamese traders to foreign individuals and enterprises also for pharmaceuticals and medicines from 1 January 2009. However, it seems that foreign-owned companies active in the pharmaceutical sector wanting to import pharmaceutical products into Viet Nam, currently do not only have to acquire an investment license, but also a *Certificate of Satisfaction of Drug Trading Conditions*, which according to our knowledge, is only granted by the Ministry of Health when a company has undertaken local investment according to strict criteria. It is our understanding that such additional obligations limit the trading rights for foreign enterprises.

1. Could the Vietnamese authorities confirm that these requirements are a precondition for foreign-owned companies wanting to import pharmaceutical products into Viet Nam? If our information is correct, could the Vietnamese authorities clarify the reasons for these requirements and explain their compliance with Viet Nam's WTO accession commitments?
2. Finally, could the Vietnamese authorities indicate what measures are envisaged in which timeframe to ameliorate the situation and achieve compliance with its WTO obligations?

ANSWER: According to the WTO accession commitments of Viet Nam, foreign enterprises would have full import trading rights for pharmaceuticals in Viet Nam's market from 1 January 2009. Import of pharmaceuticals is subject to line management, which applies to both domestic and foreign enterprises. However, please note that trading right does not include distribution right, which is subject to the respective commitments in Viet Nam's Services Commitments Schedule.

3.2.2. Ordinary customs duties

According to **para. 3.21** a number of tariff increases have been implemented since 2008. Although all tariff increases seem to have been within the limit set by Viet Nam's tariff commitments in the WTO, frequent changes in the applied tariff introduce uncertainty and may undermine the predictability of WTO's members' access to the Vietnamese market.

3. Which measures do the Vietnamese authorities envisage to take to improve the certainty and the predictability of its tariff rates?

ANSWER: As required by the Law on Promulgation of Legal Documents in Vietnam, before issuance, draft legal documents including those relating to export and import tax shall be published for public comments. In particular, these drafts will be posted on the website of the Ministry of Finance for comments by relevant organizations and individuals within a period of 60 days, which is considered as reasonable time to assure the certainty and predictability of tariff rates.

3.2.5 Fees and charges for services rendered

According to **para. 3.30** charges for customs warehousing depend on the weight of the stored item. Rates are determined separately for automobiles, motorcycles and motorbikes, computers and office equipment, consumer electronics, air conditioners, gold, and gemstones.

4. Could the Vietnamese authorities provide the list of all current warehousing fees?

ANSWER: Currently there are no warehousing charges applicable.

3.2.6 Internal taxes

5. According to **para. 3.31** and **footnote 24**, it seems that domestically produced wines and spirits are taxed on a different basis than imported products. According to the report by the Secretariat local producers could benefit from a tax cut of up to 10%. If so, this would be inconsistent with Article III GATT. Could Viet Nam please confirm this?
6. Which measures do the Vietnamese authorities envisage to bring this special consumption tax on wines and spirits in compliance with the national treatment obligations?

ANSWER: Since its accession to the WTO, Viet Nam has revised the Law on Special Consumption Tax to ensure the compliance with national treatment in terms of special consumption tax i.e. there is no discrimination in tax rate applied between imported wines, spirits and domestic ones. The regulation mentioned in footnote 24 aims at preventing special consumption tax evasion by assuring that the price declared by wholesalers/retailers will in no case be lower than the manufacturing price.

3.2.8 Customs valuation

According to **para. 3.47** Viet Nam considered the establishment of a valuation database in 2011 as a risk assessment tool.

1. Could the Vietnamese authorities indicate whether this valuation database has been established?
2. If so, which has been your experience with this risk assessment tool so far? How often is the information in the database checked and updated?
3. Has it prevented false information and was it efficient against tax evasion?
4. Could the Vietnamese authorities indicate which possibilities exist for importers to contest the reference prices in the database and prove that they should be updated?

ANSWER: Viet Nam does not use the Reference Prices as a mechanism for the purposes of customs valuation. This is used as a risk assessment tool, helping filter cases exposed to risk in fraudulent declared value by importers. Indeed, this tool is allowed under the Customs Valuation Agreement. Specifically, as defined in Article 17 "there is no provision of this Agreement shall be construed as limiting or questioning of the right of the customs authorities in the implementation of measures to ensure the truthfulness or accuracy of any statement, any documents or any declaration given for customs value determination".

The Reference Prices is not used for determining the price or imposing a custom value of goods and it's not the minimum price. In practice, Viet Nam follows strictly 6 methods provided for under Article VII of the GATT and the Agreement on Customs Valuation.

All the information in the database is updated regularly. An importer has the right to consult on the results of the risk analysis made by customs authorities, and this process will help determine the transaction value for tax purposes in accordance with the procedures and methods of the CVA Agreement.

3.3 Measures directly affecting exports

3.3.3 Export restrictions

According to **para. 3.68** the export of eight minerals used as building materials is prohibited.

5. Could the Vietnamese authorities provide a list of those eight minerals?
6. Could the Vietnamese authorities, furthermore, explain the rationale for banning the exports of these eight minerals as well as how they reconcile this measure with the provisions of Article XI GATT?

ANSWER: Viet Nam's mineral export regulations are completely in line with its WTO commitments.

3.4 Measures Affecting Production and Trade

3.4.1 Subsidies

In **para. 3.77** the Secretariat's report notes that Viet Nam did not provide subsidy notifications until March 2013, when it notified details of support programs applied in 2005-2007.

7. Could the Vietnamese authorities provide information on support programs for the years 2008 through 2012 as required by the WTO Agreement of Subsidies and Countervailing Measures?
8. If not, could the Vietnamese authorities indicate when they intend to fulfill their subsidies notification obligations, including for the years 2011-2012, notifications for the latter which were due by June 30, 2013 ?

ANSWER: Viet Nam affirms its full compliance with notification obligations of the WTO. However, due to capacity constraint, Viet Nam has not notified all the measures affecting trade as required by WTO Agreements. Viet Nam is now drafting a number of notifications on subsidy for the post 2007 period, state trading etc. and shall notify them to the WTO at the soonest time.

3.4.2 Standards, technical requirements, and conformity assessment

3.4.2.1 Technical barriers to trade

In **para 3.91** the secretariat's report explicitly differentiates between national standards (TCVNs) and organization standards (TCCSs) under the Vietnamese Law on Technical

9. Regulations and Standards. Which organizations other than STAMEQ elaborate standards?
10. What is the importance of TCCSs in Viet Nam's economy as well as for regulators?
11. How are TCCSs linked with international standards (ISO, IEC, ITU, Codex Alimentarius)?

ANSWER: Based on the Law of Standards & Technical Regulations (LSTR), the following entities have rights to elaborate the standards:

- Ministries, ministerial - level agencies;
- Legitimate organizations, individuals.
- Viet Nam promotes organizations, individuals to develop and apply TCCSs (in line of harmonizing with TCVN, international/regional/foreign standards) with a view to enhancing the capability, responsibility to their own-products, services, processes. On the other hand, regulators could use the TCCSs as technical evidences for investigation, check, surveillance in necessary cases.
- TCCSs was developed and approved by organizations/companies for use within their business activities.

3.4.3 Trade-related investment measures

In **Para. 3.118** the Secretariat's report indicates that so far Viet Nam has not notified any Vietnamese publications in which TRIMs may be found.

12. Could the Vietnamese authorities provide the respective reference in this TPR and indicate when they intend to notify this to the WTO?

ANSWER: Viet Nam has fully complied with the obligations under the TRIMs Agreement since its accession to the WTO. These commitments have been reflected in Article 11 of the Law on

Investment issued in 2005. Viet Nam is updating the TRIMs Notification and shall notify to the WTO soon.

3.4.6 Government procurement

In **para. 3.128**, the Secretariat's report indicates that Viet Nam is using procurement methods, such as open tendering, which are in line with international procurement agreements, in particular with the provision of the Government Procurement Agreement (GPA). In **paragraph 3.132**, the report recalls that in 2012 Viet Nam requested the observer status in the Committee of government procurement of the WTO which was broadly appreciated by the membership.

13. What are Viet Nam's plans for joining the GPA?

14. What are the major challenges for realizing this objective?

ANSWER: Viet Nam has become a GPA observer member and needs certain time to prepare domestic legal framework for joining the GPA as well as to help domestic enterprises adapt with this framework.

3.4.7 State trading, state-owned enterprises, and privatization/equitization

In **para. 3.143** the Secretariat mentions that Viet Nam has not notified its state-trading enterprises and that reports on the status of its equitization programme were not submitted.

15. When does Viet Nam expect to notify its state owned enterprises and to submit reports on the developments in the equitization programme?

ANSWER: Viet Nam has not expanded the scope of goods subject to state trading since its accession to the WTO. We are updating the Notification on State Trading Enterprises and shall notify to the WTO at the soonest time.

4 Trade Policies by Sector

4.5. Manufacturing

4.5.3 Other Manufacturing activities

According to **para. 4.112**, 178 active pharmaceutical ingredients and finished products (for medicines for human uses) are banned from import into Viet Nam.

16. Could the Vietnamese authorities provide a list of the 178 active pharmaceutical ingredients and finished products? Has this list been modified since February 2011?

17. If yes, could the Vietnamese authorities provide the most recent list?

18. More importantly, could the Vietnamese authorities provide a justification for such measures?

19. And how does Viet Nam assesses the compliance of such measures with the provisions of Article XI GATT?

ANSWER: The List of 178 active pharmaceutical ingredients in the form of raw materials or finished products which are banned from import into Viet Nam to produce medicines for human use under the Annex of Circular 47/2010/TT-BYT includes substances which are banned from using to produce medicines for human use in Vietnam. Those are medicines of which safety and efficacy are not adequate as for medicines for human use, or may be abused. Vietnamese manufacturers are not allowed to produce medicines containing such ingredients, either. In fact, there are no medicines for human use containing such ingredients being circulated in Viet Nam's market. At present, the list is still valid.

The Ministry of Health (MOH) is finalizing a draft Circular providing the implementation of exporting and importing rights of FDI enterprises for pharmaceuticals in Vietnam. The MOH has

been in close collaboration with relevant ministries such as MOIT, MPI, MOJ etc. in order to elaborate this draft Circular since 2008. The draft Circular has been circulated broadly for comments from relevant stakeholders including foreign enterprises, and would be enacted in the near future.

Furthermore, according to **para. 4.112** the new Ministry of Health guidelines related to the export/import of finished products by foreign-invested companies have not been issued though drafting is reported to have begun in 2008. The delay in adopting these guidelines therefore impedes the implementation of Viet Nam's WTO commitments and thus constitutes a market access barrier for foreign-invested companies.

20. Could the Vietnamese authorities indicate when the Ministry of Health will finalize and publish the new guidelines related to import/export of finished products by foreign-invested companies?

ANSWER: The Ministry of Health (MOH) is finalizing the draft Circular providing the implementation of export, import rights by FDI enterprises in the field of pharmaceutical in Vietnam. The MOH has been being in close collaboration with relevant ministries such as MOIT, MPI, MOJ etc in order to elaborate this draft Circular since 2008. The draft Circular has been circulated for broadly taking comments and opinions from relevant stake holders, including foreign enterprises, and would be enacted in the coming time.

FOLLOW-UP QUESTIONS FROM SWITZERLAND

Report by the Secretariat (WT/TPR/S/287)

Para. 3.186. As specified in this Paragraph and in Vietnamese law, with reference to Art. 39.3 TRIPS, the Vietnamese market approval authority shall not allow, for five years from the grant of market authorization to the original provider of undisclosed information, that the test data be used by subsequent applicants for market authorizations, without the consent of the original provider.

Is Switzerland's understanding correct that this means that, without consent of the originator, a) no second applicant for market authorization is allowed to rely on the data filed by the originator (i.e. the first applicant), during those five years; and b) no second applicant can pursue an abbreviated approval pathway by relying on the originator's test data during the five years protection period?

ANSWER: "Principle of non-reliance" is applied by the Vietnamese authorities in the context of clinical data protection during 5 years (from the submission of the secret data to the authority to the end of 5-year period as from the date of marketing approval).

Vietnamese authorities do not allow generic manufactures for direct reliance or reference to clinical data dossiers filed in foreign medicine agencies during the period of data protection in Viet Nam.

QUESTIONS FROM THAILAND

QUESTIONS REGARDING THE SECRETARIAT REPORT

3. TRADE POLICIES AND PRACTICES BY MEASURE

Page 56 (paragraph 3.41)

Under Decree No. 12/2006/ND-CP of 23 January 2006, importation of various goods is subject to "line management", i.e. import licences are issued by the Ministry of Industry and Trade.

Trade, but the imports are regulated by other ministries (Table A3.4). In such cases, neither the value nor the quantity of imports is restricted. The purpose of this system is, inter alia, to enforce minimum quality or performance standards for goods related to human, animal, or plant health; local network compatibility (telecommunications equipment); monetary security; or cultural sensitivities. According to the authorities, the "line management" system includes automatic and non-automatic licensing procedures."

1. Question 1: Could Viet Nam provide more detail or explanation on "line management"? Is there information regarding "line management" publicly available so that foreign market operators can learn about and understand this process easily?
2. Question 2: Which imported products are subject to "line management"? Any particular types of products or all products in general are covered under "line management"?

ANSWER: Under Decree no 12/2006/ND-CP of January 2006, there are lists of goods subject to sectoral management of different ministries. Most of the goods are not subject to line management. There are some specific goods subject to automatic licensing procedures for statistical purpose. But the automatic licensing procedures for that list of goods has been suspended. Besides, there are only very few goods still subject to the state management power of more than one ministry (including Ministry of Industry and Trade) simply because the participation of these ministries in controlling the importation of these goods is also regulated by sectoral legal documents.

All legal documents are published in the Official Gazette and circulated widely to the parties concerned.

Page 57 (paragraph 3.44)

Prior to accession, Viet Nam had eliminated foreign exchange restrictions on "dispensable and non-essential" import items and consumer goods, and "payment method" restrictions.

However, in April 2010 the Ministry of Industry and Trade promulgated a long list of "non-essential" imported commodities and consumer goods not encouraged for import. The State

Bank of Viet Nam subsequently instructed credit institutions to consider carefully or restrict the provision of foreign currency loans to finance imports of the listed items. The list was expanded in 2011, as Decision 1899 was replaced by Decision No. 1380/QD-BCT of 25 March 2011. Among the discouraged items are live animals, dairy products, sugar confectionary, fish and crustaceans, and table salt."

3. Question 3: Could Viet Nam elaborate more on what kinds of products are on the list of "non-essential" imported commodities and consumer goods not encouraged for import? What is the reasoning behind such list and the restriction on the provision of foreign currency loans to finance imports of certain products, i.e. live animals, dairy products, sugar confectionary, fish and crustaceans, and table salt?

ANSWER: List of "non-essential" imported commodities and consumer goods not encouraged for import issued by the Ministry of Industry and Trade of Viet Nam is a reference document for relevant ministries and agencies to develop policies consistent with WTO, such as increase or decrease in MFN tax in line with the international commitments of Vietnam; application of technical measures to trade in line with TBT Agreement in WTO.... This Decision of the Ministry of Industry and Trade of Viet Nam is not a legal and mandatory document.

The issuance of this Decision is completely not intended to restrict the provision of foreign currency loans to finance imports of the listed items. Commercial banks and credit institutions in Viet Nam have the right to decide, in accordance with current legislation, which enterprises to provide foreign currency loans to import goods (without any discrimination between essential and non-essential goods).

Page 58 (paragraph 3.49)

"According to Vietnamese businesses, the application of HS Codes is not always uniform across customs offices, which means that the same good could be subject to different duty depending on classification matters. According to the customs authorities, some of these issues may be due to differences in the technical documentation and product descriptions provided by the importers themselves, or to new high-tech, multi-functional, and complex goods giving rise to different opinions among customs officials regarding correct classification. Viet Nam Customs is currently constructing a database for unified inspection and classification of certain types of goods.

4. Question 4: When there are differences in customs valuation in some products, how does the Vietnamese Customs deal with the issue? Have there been complaints from Vietnamese businesses to the authorities and, if so, how did the authorities respond to those complaints?

ANSWER: In order to strengthen the management and examine the classification of goods, apply uniform tax rate across the country, 06/22/2012 Director General of General Department of Viet Nam Customs has signed, issued Decision No. 1266/QD-TCHQ approved "The project of constructing the database management information system conducted the Nomenclature, Schedule and Classification, Tariff rate (MHS)". Therefore, based on the Schedule, the database management information system conducted the Nomenclature, Schedule and Classification, Tariff rate (MHSv1.1) has been established officially and used by the customs authorities from May 9/2013.

The importer has the right to complain according to the regulation of law on complaint

These are procedures for dealing with appeal on classification:

1. For claims on the results of analysis: Customs shall ask for examination from other competent agencies to re-test.
2. For claims on wrong classification: Customs may follow these steps:
 - Review then results of classification in the consulting board of the Headquarter then give out the final decision (the result can be changed);
 - Consult with other relevant parties in the country of export or consulting with the experts of WCO.

QUESTIONS FROM THE UNITED STATES

Part I: Questions on the Secretariat Report (WT/TPR/S/287)

Summary

Page 9, paragraph 8: The Secretariat's report states, "Legislation issued by a lower state organ must be consistent with the legal documents of higher state organs. However, it is not always evident whether new legislation abrogates or supplements existing legislation. Ministries continue to rely on official letters, notices, or guidelines to set policy and clarify implementation issues, although the Law on promulgation of Legal Documents stipulates that such communications have no legal or binding effect."

1. Considering that such non-binding letters, notices or guidelines "have no legal or binding effect," how do such notices legally impact implementation of existing legislation? For example, how do official letters updating reference prices impact customs valuation determinations?

ANSWER: According to the Law on Promulgation of legal documents, the legal documents issued by lower state bodies shall be in compliance with those of the higher bodies. However, this regulation is applied only to legal documents. The official letters, notices and guidelines of Ministries are not considered as legal documents and have no legal and binding effect. Therefore, such documents could not legally impact implementation of existing legislation.

In this regard, the official letters updating reference prices are not legal documents. They can be viewed as administrative documents. Therefore, they could not impact customs valuation determinations.

2. TRADE POLICY REGIME: FRAMEWORK AND OBJECTIVES

2.1. General Framework

Page 33, paragraph 2.9: The Secretariat's report states, "the effective date of the legal documents is stipulated in the document itself, but may not be less than 45 days from the date of promulgation or signature. In addition, the full texts of the draft legal acts are posted on the Government's website and or the lead drafting agency's website at least 60 days prior to approval."

2. Since Viet Nam's accession to the WTO, Viet Nam has promulgated and enacted several regulations and laws in less than the 45 day stipulation. For example, Directive 23/CT-TTg was issued by the Prime Minister on 2 September 2012 with an entry into force date of 20 September 2012. Additionally, the Ministry of Industry and Trade's Decision 5737/QG-BCT, implementing Directive 23 was published on 28 September 2012 and entered into force on the same day. Also, the Ministry of Finance's Letter 5486/TCHQ-TXNK, establishing new reference prices for various products, was published on 10 October 2012 and was applied to customs declarations of imports registered from 18 October 2012. Please explain the reasons for which Viet Nam enacted such regulations less than 45 days from the date of promulgation or signature.
3. Further, in many instances Viet Nam has not posted texts of draft legal acts prior to being approved. Can Viet Nam further explain why only some regulations and laws are posted on the Government's website and/or lead drafting agency's website within the proscribed 60-day deadline? What steps is Viet Nam taking to address this discrepancy?

ANSWER: According to the Law on Promulgation of legal documents, the effective date of the legal documents is stipulated in the document itself, but may not be less than 45 days from the date of promulgation or signature. In addition, the full draft texts are posted on the Government's website and/or the lead drafting bodies' website at least 60 days prior to adoption. However, this regulation is only applied to legal documents. In the US's examples, Directive 23/CT-TTg dated 2 September 2012, the Ministry of Industry and Trade's Decision 5737/QG-BCT implementing

Directive 23/CT-TTg and the Ministry of Finance's Letter 5486/TCHQ-TXNK are not legal documents. As a result, their effective dates may be less than 45 days from the date of promulgation or signature.

With respect to legal documents, in certain special circumstances, some legal documents may take effect on the dates of their promulgation or signatures if those legal documents stipulate measures to be taken in a state of emergency and promulgated to promptly meeting requirements for natural disaster preparedness and outbreaks of epidemics as long as they are immediately posted on the website of the issuing agency and announced on the mass media; and posted on the Official Gazette of the Socialist Republic of Vietnam no later than 20 working days since the dates of their promulgation or signatures.

2.3 Trade Agreements and Arrangements

2.3.1 WTO

Page 34, paragraph 2.17: The Secretariat's report notes that since Viet Nam became a WTO Member, it has submitted 130 notifications, the majority of which concerned SPS and TBT matters.

4. Considering that several notifications remain outstanding, what steps is Viet Nam taking to ensure that its measures and regulations are fully and completely notified to the WTO?

ANSWER: Viet Nam affirms its full compliance with notification obligation of the WTO. However, due to capacity constraint, Viet Nam has not notified all the measures affecting trade as required by WTO Agreements. Viet Nam is now drafting a number of notifications on subsidy for the post 2007 period, state trading etc. and shall notify them to the WTO at the soonest time.

Page 34, paragraph 2.17 and page 57, paragraph 3.45:

5. The Secretariat's report states, "in the area of customs valuation, it has reported no changes in laws and regulations." However, page 57, paragraph 3.45 of the report goes on to note several new Decisions related to customs valuation, including Decision No. 40/2007/ND-CP, Circular No. 205/2010/TT-BTC and Decision No. 103/QD-TCHQ. When does Viet Nam plan to notify this legislation to the WTO?

ANSWER: We will notify the legislation at the soonest time.

2.4 Investment regime

Page 40, paragraph 2.37: The Secretariat report states "Concerns have also been raised about Government Decree No 46/2011/ND-CP of 17 June 2011, which links the extension of work permits for foreign employees to the simultaneous establishment of a contract to train a Vietnamese employee to replace the foreign worker. According to the Vietnamese authorities, an amendment to the Labour Code, effective 1 May 2013, does not contain any such provision, nor will it be contained in the decree implementing some articles of the Labour Code."

6. Please further explain the provisions contained in the amendment to the Labour Code, as well as any changes contained in the decree implementing some articles of the Labour Code, especially as it pertains to work permits for foreign employees.

ANSWER: Decree No.46/2011/ND-CP was replaced by Decree No. 102/2013/ND-CP detailing a number of articles of the Labour Code on employment of foreigners working in Viet Nam Pursuant to the new Decree, provisions on conditions, licensing procedures as well as deportation for labor workers who are foreign citizens working in Viet Nam. Under this Decree, the reissuance of work permits is done when work permits are expired. The extension of work permits is not stipulated under this decree.

Page 40, paragraph 2.38: According to the Secretariat's report, Viet Nam may grant land leases on certain projects for up to 70 years instead of the customary 50 years (e.g., on large investments or those benefiting socio-economically difficult areas).

7. Could Viet Nam please provide further information regarding the criteria for projects to qualify for the longer land lease terms?
8. Also, are such terms granted by the central, provincial or local government level?

ANSWER: Pursuant to Item 3, Article 67, Land Law 2003: "projects on large scales and at low rates of return, projects in areas with specially difficult socio-economic conditions which require a longer term, the term of land allocation, land lease shall not exceed 70 years".

Pursuant to the Land Law, Provincial People's Committees (PPC) are responsible for land lease. A PPC will issue specific regulations to determine the term of land lease which are based on actual local conditions and situation (which define specifically large scale projects, areas with specially difficult socio-economic conditions...) of its province.

3. TRADE POLICIES AND PRACTICES BY MEASURE

3.2 Measures Directly Affecting Imports

3.2.1 Import procedures and requirements

Page 44, paragraph 3.14: The Secretariat report notes Ministry of Industry and Trade (MOIT) Notice 197, which restricted imports of certain products (including wine) to only three seaports, and mentions that MOIT abrogated Notice 197 with Notice 301 on 28 December 2012. The Secretariat further notes, "the new Notice, aimed at streamlined administrative procedures, stipulates that the affected goods may now be imported through the ordinary channels of commerce in accordance with current legislation."

9. Our understanding, however, is that wine exporters and importers still report difficulties with Customs officers enforcing Notice 197 restricting the port of entry for wine to just three seaports. Can Viet Nam therefore please confirm that the restrictions contained in Notice 197 are no longer in effect?
10. What steps is Viet Nam taking to ensure that such regulations are being uniformly implemented?
11. Does Notice No. 301/TB-BCT eliminate the requirement for consularized documents for the importation of wines, spirits, cosmetics, and mobile phones? If not, why is this requirement maintained and what documents are required to be consularized?
12. Does Viet Nam maintain other consularization requirements for import documents, and if so, can Viet Nam specify these requirements, as well as the products and types of documents to which they apply?

ANSWER: The Notice 197/TB-BCT of the Ministry of Industry and Trade of Viet Nam stipulating import management of alcohol, cosmetics, and mobile phone was replaced by Notice 301 dated 28th December 2012. All the affected goods may now be imported in accordance with current legislation.

As for alcohol: the Decree 94/2012/ND-CP dated November 12th 2012 of the Government regulates that traders can make import and clearance procedures at international ports.

As for cosmetics: requirement on consular legalization is stipulated in Circular 06/2011/TT-BYT of the Ministry of Health of Vietnam.

3.2.2. Ordinary customs duties

Page 45, paragraph 3.19: The Secretariat's report states, "Viet Nam bound all its tariff lines at *ad valorem* rates with the exception of second-hand motor vehicles, which are bound at the lower of a compound rate or 200% *ad valorem*. However, Viet Nam reserved the right to apply specific or compound import duties on certain "sensitive" goods to address customs fraud. So far, this has not proven necessary, and only second-hand motor vehicles are subject to (applied) non-*ad valorem* rates at present."

13. Can Viet Nam provide data on its annual imports by value and quantity of second-hand automobiles since its accession?

ANSWER: Since WTO accession, Viet Nam's tariff schedules and lists of import and export goods are developed on the basis of ASEAN Harmonised Tariff Nomenclature (8-digit AHTN). In these schedules, there are no sub-group by product code (HS code) to distinguish, and therefore, to collect separate statistics for used and new cars. The only statistics available are CKD automobiles:

Imported CKD automobiles of Viet Nam in the 2007-2012 period

(Volume: unit)

2007	30,330
2008	51,059
2009	80,596
2010	53,841
2011	54,621
2012	27,405

Page 46, paragraph 3.21: The Secretariat's report states, "a number of tariff increases since 2008 seem primarily motivated by a willingness to afford higher protection to certain domestic sectors..." Although tariff increases seem to be within bound limits set by Viet Nam's tariff commitments, Viet Nam has, on occasion, implemented tariff increases without advance notification to the trade prior to implementing the increases.

14. What is the process by which Viet Nam notifies Customs agents as well as traders of the tariff increases?

ANSWER: According to the Law on Promulgation of legal documents of Vietnam, before adoption, a draft text of legal document regarding changes in the applied tariff rate for products must be circulated to receive comments from relevant ministries and agencies. At the same time, such draft text will be uploaded on the official portal of the Ministry of Finance for comments by organizations and individuals. Once legal document promulgated, it will be published on the Official Gazette to ensure a transparent mechanism so that all interested parties are aware of the tariff increase.

3.2.4. Tariff-rate quotas, tariff exemptions

Page 48, paragraph 3.27: The Secretariat's report notes that under Viet Nam's Law on Import Tax and Export Tax, goods exempt from import duties include "fixed assets imported for projects entitled to investment incentives, specially encouraged or funded through official development assistance programs." Further, the report notes that the tax exemption for investment projects extends to equipment and machinery, as well as raw materials and components.

15. Please provide further information regarding the criteria for projects to qualify for these duty exemptions.

ANSWER: The Law on Import Tax and Export Tax of Vietnam entered into force from 1/1/2006. It stipulated that goods imported for the purposes of creating fixed assets in encouraged investment projects and the Official Development Assistance (ODA) projects will be exempted from import duties. The criteria for qualifying for these duty exemption are the field or the geographical area of encouraged investment. These criteria are neither based on export performance nor local content requirement and import substitution. Therefore, the law is fully complied with WTO Agreements.

3.2.6 Internal taxes

Page 50, table 3.4: The Secretariat report outlines the goods and services subject to special consumption tax. The table indicates that effective 01 January 2013, Viet Nam increased the special consumption tax on spirits and beer.

16. Did Viet Nam publish this increase in advance so trading partners and companies were aware of the increase prior to implementation? If so, where was the change published?

ANSWER: According to the Law on Promulgation of legal documents of Vietnam, before adoption, a draft text of legal document regarding changes in the applied tariff rate for products must be circulated to receive comments from relevant ministries and agencies. At the same time, such draft text will be uploaded on the official portal of the Ministry of Finance for comments by organizations and individuals in 60 days. Once a legal document is promulgated, it will be published on the Official Gazette and the website of the Government or of the issuing authority to ensure a transparent mechanism so that all interested parties are aware of the tariff increase.

3.2.7. Import prohibitions, restrictions, and licensing

Pages 56 - 57, paragraphs 3.41 -3.44: As the Secretariat's report suggests, since Viet Nam's accession six years ago, Viet Nam has not fully notified or clarified its import licensing procedures in light of the WTO Import Licensing Procedures Agreement. The footnotes in the Secretariat's Report illustrate the extent to which questions seeking such clarification have not been satisfactorily answered. As such, Viet Nam's import licensing regime remains unclear and confusing.

17. With this in mind, when can we expect Viet Nam to fully explain its import licensing requirements in light of its obligations under the WTO Agreement on Import Licensing Procedures? Will Viet Nam provide a complete response to the Article 7.3 Questionnaire prior to the annual September 30th deadline?

ANSWER: Viet Nam endeavors to be in compliance to rules on WTO notifications, as well as notifications on import licensing. Viet Nam has made notifications on the regulations for automatic import license such as Circular 42/2010/TT-BCT; Circular 24/2010/TT-BCT; Circular 32/2011/TT-BCT; Circular 27/2012/TT-BCT; Circular 23/2012/TT-BCT. Viet Nam is trying to formulate an annual report on automatic import licence system for 2012 according to Article 7.3 and will send to WTO duly at 30 September.

Page 57, paragraph 3.44: The Secretariat's report states, "Prior to accession, Viet Nam had eliminated foreign exchange restrictions on 'dispensable and non-essential' import items and consumer goods, and 'payment method' restrictions. However, in April 2010 the Ministry of Industry and Trade promulgated a long list of "non-essential" imported commodities and consumer goods not encouraged for import. The State Bank of Viet Nam subsequently instructed credit institutions to consider carefully or restrict the provision of foreign currency loans to finance imports of the listed items. The list was expanded in 2011, as Decision 1899 was replaced by Decision No. 1380/QD-BCT of 25 March 2011. Among the discouraged items are live animals, dairy products, sugar confectionary, fish and crustaceans, and table salt."

18. Can Viet Nam explain how it views the establishment of lists of "non-essential" imported commodities and consumer goods not encouraged for import in Decision No. 1899/2010/QD-BCT and Decision No. 1380/QD-BCT, especially in light of GATT Article 11?

ANSWER: The list of "non-essential" imported commodities and consumer goods not encouraged for import issued by the Ministry of Industry and Trade of Viet Nam is a reference document for relevant ministries and agencies to develop policies consistent with WTO, such as increase or decrease in MFN tax in line with the international commitments of Vietnam; application of technical measures to trade in line with TBT Agreement in WTO.... This Decision of the Ministry of Industry and Trade of Viet Nam is not a legal and mandatory document.

The issuance of this Decision is completely not intended to restrict the provision of foreign currency loans to finance imports of the listed items. Current regulations do not allow the Government or the State Bank of Viet Nam to get involved in business activities of commercial banks and credit institutions. Commercial banks and credit institutions in Viet Nam have the right to decide, in accordance with current legislation, which enterprises to provide foreign currency loans to import goods (without any discrimination between essential and non-essential goods). Therefore, this decision does not restrict imports and does not breach WTO rules.

3.2.8. Customs Valuation

Page 57, paragraph 3.47: The Secretariat's report states that "in January 2011, the General Department of Customs issued an official letter identifying reference prices for selected imported goods by trading partner." This letter has been expanded and revised numerous times since the initial release.

19. Please explain in greater detail how the reference prices are used for the purposes of customs valuation.
20. How does Viet Nam view the use of its reference price mechanism in light of the WTO Customs Valuation Agreement?

ANSWER: Viet Nam does not use the Reference Prices as a mechanism for the purposes of customs valuation. This is used as a risk assessment tool, helping filter cases exposed to risk in fraudulent declared value by importers. Indeed, this tool is allowed under the Customs Valuation Agreement. Specifically, as defined in Article 17 "there is no provision of this Agreement shall be construed as limiting or questioning of the right of the customs authorities in the implementation of measures to ensure the truthfulness or accuracy of any statement, any documents or any declaration given for customs value determination".

The Reference Prices is not used for determining the price or imposing a custom value of goods and it's not the minimum price. In practice, Viet Nam follows strictly 6 methods provided for under Article VII of the GATT and the Agreement on Customs Valuation.

Page 58, paragraph 3.49: The Secretariat's report states, "the application of HS codes is not always uniform across customs offices, which means that the same good could be subject to different duties depending on classification..." Exporters and importers both report that product mischaracterization remains a significant challenge.

21. What steps are being undertaken to minimize product mischaracterization in the future, and to ensure uniform application of all customs regulations?

ANSWER: In order to strengthen the management and examine the classification of goods, apply uniform tax rate across the country, 06/22/2012 Director General Department of General Department of Viet Nam Customs has signed, issued Decision No. 1266/QD-TCHQ approved "The project of constructing the database management information system conducted the Nomenclature, Schedule and Classification, Tariff rate (MHS)". Therefore, based on the Schedule, the database management information system conducted the Nomenclature, Schedule and Classification, Tariff rate (MHSv1.1) has been established officially and used by the customs authorities from May 9/2013.

3.2.10 Anti-dumping, countervailing duty and safeguard regimes:

Page 59, paragraph 3.58: The Secretariat's report notes that Viet Nam responded to questions regarding its anti-dumping regime in 2010.

22. When does Viet Nam expect to submit its countervailing duty legislation for review by other Members?

ANSWER: Vietnam is ready to submit promptly its countervailing duty legislation to the WTO.

3.3.4. Export subsidies

Page 63, paragraph 3.69: According to the Secretariat's report, agricultural export subsidies were discontinued upon accession.

23. Could Viet Nam please identify the measure(s) or legislation by which such subsidies were discontinued?

ANSWER: Viet Nam abolished all legal documents related to subsidies from the date of accession. There are no measures on export subsidies in new legal documents to avoid breaking commitment.

Page 63, paragraph 3.70: The Secretariat's report mentions that the Viet Nam Development Bank provides interest rate support on medium- and long-term loans.

24. Is this support linked to, or contingent upon exporting?

25. If so, could Viet Nam explain how it views the provision of such support in light of Article 3.1(a) of the WTO Agreement on Subsidies and Countervailing Measures (SCM)?

ANSWER: According to Decree No. 75/2011/ND-CP dated 30/8/2011 of the Government on state development investment credit and export credit, the Chairman of the Management Council of the Vietnam Development Bank (VDB) shall report export loan interest rates to the Ministry of Finance for publication on the principle that its interest rates should be compatible with those of the market.

As a result, the interest rate of the VDB matches with those of the market (interest rates of commercial banks) and there is no favour or support of interest rates extended by the VDB to the businesses.

3.3.5. Export promotion and marketing assistance:

Pages 63-64, paragraphs 3.73-3.74: According to the Secretariat's report, the Export Promotion Fund was "closed down" pursuant to Decision No. 124/2008/QD-TTg of 8 September 2008, but that Viet Nam's trade promotion program is implemented under Decision No. 72/2010/QD-TTg of 15 November 2010.

26. Are official translated copies of Decision No. 124/2008/ QD-TTg and Decision No. 72/2010/QD-TTg publically available?

ANSWER: Decision No. 124/2008/QD-TTg and Decision No. 72/2010/QD-TTg were promulgated but their official translated copies are not publically available. The unofficial translation of these Decisions will be provided at the soonest time.

Page 63, paragraph 3.73: The Secretariat's report also mentions that provincial and municipal People's Committees were invited to finance trade promotion activities with surplus revenue from the Export Promotion Fund.

27. What trade promotion activities have provincial and municipal governments supported with such funds, and what conditions do the provincial and municipal governments impose on enterprises that take part in such activities?

ANSWER: Trade promotion activities are not financed by the Export Promotion Fund as the Fund was repealed pursuant to Decision No. 124/2008/QD-TTg. Instead, pursuant to Item 1, Article 8 of Decision No. 72/2010/QD-TTg, sources of funding to support provincial trade promotion activities shall come directly from provincial and other legitimate financial sources.

3.4. Measures Affecting Production and Trade

3.4.1 Subsidies

Page 64, paragraph 3.76: The Secretariat's report notes that incentives for the textile and garment industries contingent upon export performance or the use of domestic over imported goods were curtailed in 2006 when Viet Nam repealed Decision No. 55/2001/QD-TTg on May 31, 2006.

28. Please clarify whether such incentives were terminated as such or simply modified to remove the export performance and/or local-content requirements.

29. Please identify the official measure(s) by which Decision No. 55 was effectively repealed.

ANSWER: In order to implement our commitments of eliminating export subsidies for textile and garment industry upon WTO accession, on May 31, 2006, the Prime Minister issued the Decision No.126/2006/QD-TTg to replace the Decision No.55/2001/QD-TTg on approving the development strategy and policies to support the implementation of the development strategy of the textile and garment industry until 2010. Since then, Viet Nam has not maintained any supports contingent to export performance and local-content requirements for enterprises in the textile and garment industry.

Page 64, paragraph 3.76: According to the Secretariat's report, upon its accession to the WTO, Viet Nam terminated certain investment incentives linked to export performance and local content, or removed export performance and local-content requirements from such incentives.

30. Could Viet Nam please further explain which incentives were terminated as such, as well as the exact dates on which they were effectively terminated and the official measure(s) by which they were effectively terminated?
31. Could Viet Nam please further explain which incentives were continued but with export performance and/or local-content requirements removed, as well as the exact dates on which such requirements were effectively removed and the official measure(s) by which such requirements were effectively removed?

ANSWER: Viet Nam has fully complied with the obligations under the Agreement on Subsidies and Countervailing Measures upon its accession to the WTO. Viet Nam does not adopt or maintain any measure inconsistent with its WTO commitments.

Page 65, paragraph 3.77: The Secretariat's report notes that the subsidy notification submitted by Viet Nam thus far (G/SCM/N/155/VNM) only covers programs applied in 2005-2007 and that without a more current notification, the information in the Secretariat report can only be "indicative" of the kind of support provided by the government to industry.

32. One legal measure not included in Viet Nam's subsidy notification or the Secretariat's report is Decision No. 12/2011/QD-TTg (February 24, 2011), Policy on Developing Support for a Number of Industries. This measure appears to outline government support measures for, *inter alia*, the following industries: electronics, automobiles, textiles and garments, leather footwear and hi-tech. Please describe the policy objectives and the nature of any government financial support provided under Decision No. 12/2011/QD-TTg, and identify all related implementing measures (laws, decisions, etc.).
33. When does Viet Nam expect to submit additional notifications to cover programs applied in years subsequent to 2007?
34. Will any future notifications include programs at the sub-central levels, e.g., programs related to the use of funds from the Export Promotion Fund, as noted above?

ANSWER: a. The Decision No.12/2011/QD-TTg dated 24 February 2011 sets out development policy for some supporting industries, including mechanics and manufacture, electronics and informatics, automobile manufacture and assembly, textiles and garments, and footwear, and supporting industries for developing the high technology. This development policy is manifested in the supporting measures for the following purposes:

- Encouraging to expand market
- Encouraging to develop infrastructure
- Encouraging to improve science-technology and develop human resources
- Providing information.

These supporting measures are not prohibited subsidies and provided for under WTO Agreements. Some other legal documents relate to these supporting measures are as follows:

- The Decision No.105/2009/QĐ-TTg dated 19 August 2009 of the Prime Minister on issuance of the regulation on managing industrial clusters;
- The Decree No.56/2009/NĐ-CP dated 30 June 2009 of the Government on support for small and medium sized enterprises.

b. After submitting the Notification on Subsidy Programs applied for the period 2005-2007, Viet Nam is drafting the Notification on Subsidy Programs for the next period and would send to the WTO Secretariat at the soonest time.

c. Due to limited statistics capacity, Viet Nam hasn't been able to provide fully and timely data on values of each subsidy program as well as notify programs at the sub-central levels. In addition, regarding the Export Promotion Fund mentioned by the US, Viet Nam would like to affirm that our Prime Minister issued the Decision No.124/2008/QĐ-TTg dated 8 September 2008 repealing the Decision No.195/1999/QĐ-TTg dated 27 September 1999 on establishment, use and management of the Export Promotion Fund as our commitments to the WTO.

3.4.2 Standards, technical requirements, and conformity assessment

Page 69, paragraph 3.93: The Secretariat's report states, "at the end of 2012, Viet Nam had 6,800 national standards, 40% of which were harmonized with international, regional or foreign standards." The report further notes that Viet Nam has 116 technical committees with plans to complete 813 standards in 2013. To date, only a fraction of the proposed standards to be drafted in 2013 have been notified to the WTO TBT or SPS Committees.

35. Is there a public website which conveys Viet Nam's plans to finalize standards in 2013, so that WTO members can understand the areas in which Viet Nam is aligning its standards to international standards? Are any of the finalized standards mandatory standards? If so, will Viet Nam be notifying these to the WTO TBT Committee?

ANSWER: According to the TBT Agreement, all national standards are voluntary to apply. Therefore, Members do not have obligation to notify all national standards, except for the standards that have legal presumption to become technical regulation. In respect of this type of standards, during the development of technical regulation, Viet Nam has notified the WTO of all the drafts of technical regulations of which the major requirements base on relevant standards for comments.

For Viet Nam's plan to finalize standards in 2013, please access this website: <http://www.vsqi.gov.vn>.

Page 71, paragraph 3.101:

36. How does Viet Nam ensure compliance with its notification requirements under the SPS Agreement
37. If Viet Nam has any legal mechanisms in place to promote compliance with these requirements, could Viet Nam please identify them?
38. Could Viet Nam also explain, in particular, how it ensures that, when required under the SPS Agreement, notifications are made at an early stage to ensure a reasonable period of time for consideration of comments?

ANSWER: Since 2007 after becoming Membership of WTO, Viet Nam has been fully implemented her notification obligations regarding SPS and TBT.

On SPS, Prime Minister had issued Decision 99/2005/QĐ-TTg dated 9 May 2005 to establish Viet Nam National Notification Authority and Enquiry Point to fulfil notification obligation in WTO/SPS Agreement. Network has formed between relevant Ministries to ensure the implementation. Ministry of Agriculture and Rural Development as coordinating roles of the network had issued Decision 1733/QĐ-BNN-TCCB dated 17 July 2005 and

Decision 04/2008/QĐ-BNN dated 10 January 2008 on organization structure, functions and coordination mechanism of National Notification Authority and the networks in relevant Ministries. In accordance with the regulation, i.e. Article 7 of Decision 04/2008/QĐ-BNN, it requires drafting agency, as soon as the available of final draft, to provide at least 70 days to notify to WTO and reasonable period to response to comments from WTO Members.

Page 72, paragraph 3.102: The Secretariat's report states that, "several members have used the SPS Committee on various occasions to raise a specific concern with Viet Nam about its ban on imports of offal products as from July 7, 2010."

39. Did Viet Nam notify the SPS Committee of its offal ban when implemented in 2010? If not, why not?
40. When will Viet Nam lift its unwarranted restrictions?
41. Is it Viet Nam's intention to notify the WTO SPS Committee once the ban has been lifted?

ANSWER: The halting of offal importation in 2010 in responding to public pressure after Vietnamese competent authorities detected several consignments that violated Viet Nam's regulations on food safety. The temporary stop aimed at reviewing risk management, strengthening monitoring system and capacity of Viet Nam authorities. Sanitary and Phytosanitary Measures applies to offal shall following Circular 25/2010/TT-BNNPTNT that had been notified to WTO in Notification G/SPS/N/VNM/20 dated 30 June 2010. To ensure the transparency, Ministry of Agriculture and Rural Development had sent a Verbal Note to inform all Diplomatic Missions in Viet Nam about the re-open decision.

The decision to resume importation in 3 ports is based on statistics and to ensure the benefit of enterprises. In accordance with sample taking regulations, consignments have to be opened for inspection; therefore, appropriate facilities should be in place to preserve quality. After reviewing infrastructure, there are 3 major ports of Hai Phong, Da Nang and Ho Chi Minh City could meet the requirements. In addition, importation statistic shows that importation of the products mainly goes through those 3 ports.

Page 74, paragraph 3.109: The Secretariat's report states, "to meet these objectives, the strategy includes a comprehensive list of actions to be undertaken by different state agencies, such as improving institutional support for food safety in the regional offices of the Ministry of Health and Ministry of Agriculture and Rural Development, improving and better coordinating food safety examinations, improving inspection and control, and elaborating and enforcing technical regulations and requirement." To implement the strategy on food safety, Viet Nam published Decree 38 outlining the jurisdiction and responsibilities of the Ministry of Agriculture and Rural Development, Ministry of Health, and Ministry of Industry and Trade in implementing food safety.

42. Can Viet Nam provide a detailed summary of the implementing circulars for Decree 38 that have been issued to date, and a timeline for issuance of all remaining implementing circulars by the three Ministries charged with implementing Decree 38? Would Viet Nam please provide any risk assessments that it has produced in support of the implementing circulars that it has issued to date? Moreover, can Viet Nam further clarify how the three Ministries will coordinate with each other to avoid duplication of regulatory reviews and ensure that measures are no more restrictive than necessary?
43. Does Viet Nam intend to notify all implementing circulars to the WTO SPS or TBT Committees that affect international trade for comment?
44. What steps is Viet Nam taking to ensure that all implementing circulars comply with Viet Nam's WTO obligations and are consistent in Viet Nam's other domestic requirements? For example, how is Viet Nam ensuring that there is consistency among labeling requirements for GMOs in the Food Safety Law and Bio-Safety Decree and that they are consistent with WTO requirements?

ANSWER: All the issued and drafted documents are posted on the authorities' official website. During the process of drafting regulations, involved authorities are invited to participate as

members of the drafting committee. Besides, the Government of Viet Nam has assigned Ministry of Justice, namely Bureau of Legal Normative Documents Post-Review is the authority to supervising system and avoiding duplication, violation of obligations to the international commitments of Vietnam.

Page 75, paragraph 3.110: The Secretariat's report states, "importers of food and agricultural products have to provide the Viet Nam Authorities with a number of supporting documents (Table 3.13)."

45. What steps is Viet Nam taking to streamline and reduce the administrative burden applied to importers who need import licenses before they import food and agricultural products?

ANSWER: Current Viet Nam requirements on the issue are following international practices. In addition, Vietnamese Government has accelerated the administrative reform to facilitate activities of governmental agencies and business operators.

Page 75, paragraph 3.110: The Secretariat's report states that "Importers of food and agricultural products have to provide the Viet Nam authorities with a number of supporting documents." For example, MARD Circular 25 requires detailed appendices outlining background on meat, poultry, and seafood processing facilities that appears irrelevant to food safety concerns.

46. How will Viet Nam ensure that any requirements imposed are needed to protect health, are based on scientific principles, and are no more trade restrictive than necessary?

47. Does Viet Nam have plans to streamline and reduce administrative burden applied to importers, particularly when requirements do not help ensure food safety or quality, or confirm animal or plant health?

ANSWER: Current Viet Nam requirements on the issue are following international practices. In addition, Vietnamese Government has accelerate the administrative reform to facilitate activities of governmental agencies and business operators.

3.4.4. Free zones and special economic areas

Page 78, paragraph 3.122: According to the Secretariat's report, tax incentives for enterprises in industrial and export-processing zones largely expired as of 2005, and current privileges in these zones mainly pertain to rental of land or premises and the supply of utilities, such as water and electricity, among others.

48. Could Viet Nam clarify what tax incentives are still available to enterprises in these zones, and what the requirements are for enterprises to qualify for such incentives, if other than location in the zone?

49. Could Viet Nam clearly identify all the measure(s), as well as the terms and conditions, under which enterprises in these zones may receive the advantages pertaining to rental of land or premises and the provision of utilities?

ANSWER: All industrial and export processing zone subsidies that fell within the meaning of Article 3 of the WTO Agreement on Subsidies and Countervailing Measures (ASCM) had been eliminated on or before the date of accession, and that such subsidies are not reintroduced. Moreover, no new subsidies inconsistent with Article 3.1(a) or (b) of the ASCM are introduced after accession.

In addition, Viet Nam has fully complied with the obligations under the Agreement on Subsidies and Countervailing Measures upon its accession to the WTO. Viet Nam does not adopt or maintain any measure inconsistent with its WTO commitments.

3.4.10. Trade-related intellectual property regime:

Page 86, paragraph 3.157: The Secretariat's report notes that Viet Nam made amendments in regards to its 2008 legislation on IP laws but that they have yet to be notified formally to the TRIPS Council.

50. Please explain what specifically those amendments were, and when Viet Nam intends to formally notify the TRIPS Council.

ANSWER: We will notify the legislation at the soonest time

Page 87, paragraph 3.163: The Secretariat's report notes that Viet Nam has not yet signed the most recent treaties negotiated in WIPO or the trademark procedural treaties.

51. Please further explain why Viet Nam has not yet signed these treaties, and whether there are any plans to take further action on these matters?

ANSWER: Despite having not yet planned the time of accession, Viet Nam is making serious research treaties to accede in appropriate time. For example, Vietnam organized two seminars on treaties on copyright and related rights in Hanoi and Ho Chi Minh city with assistance of WIPO and Japan Copyright Office (JCO).

Page 89, paragraph 3.170: The Secretariat's report notes that with respect to the Law on Intellectual Property, implementing provisions are generally regulated by decrees and circulars.

52. What efforts have been made to increase the robustness of criminal decrees and circulars as a deterrent against intellectual property infringement?

ANSWER: Implementing commitments on the promulgation of the Circular on criminal prosecution for piracy acts on a commercial scale, on 29/02/2008 Viet Nam enacted the Joint Circular No. 01/2008/TTLT-TANDTC-VKSNDTC-BTC-BTP providing guidance to criminal prosecution for infringement of IP rights; on 16/09/2009 Viet Nam promulgated the Law no. 27/2009/QH12 amending and supplementing some articles of the Criminal Code of which Article 170a provided regulations on infringement of copyright and copyright related rights in accordance with the provisions of Article 61 of the TRIPS Agreement (for criminal proceedings).

53. How are Vietnamese judges trained on enforcing such measures designed to protect intellectual property?

ANSWER: Under the jurisdiction of the Supreme People's Court. With regard to the coordination of the Ministry of Culture, Sports and Tourism: Ministry of Culture, Sports and Tourism organizes, in collaboration with the Institute of Judicial Sciences Supreme People's Court, training courses on QTG, QLQ for judges working in related judicial works.

54. Articles 7(2), 7(3) and 8(2) of the Law on Intellectual Property appear to grant the government of Viet Nam the authority to take away copyright protection from otherwise copyrightable works. While Article 17 of the Berne Convention allows governments to control/prevent the dissemination of copies of particular works, the Berne Convention provides for copyright protection for eligible works. Please explain how these provisions of the Law on Intellectual Property relate to Article 9.1 of the TRIPS Agreement, which incorporates Articles 1 through 21 of the Berne Convention, excluding Article 6bis of that Convention.

ANSWER: Provisions of copyright and copyright-related rights set out in the Law on Intellectual Property is fully consistent with Article 9.1 of the TRIPS Agreement.

Copyright arises since the work is created and displayed under a certain material form, regardless of content, quality, form, mean, language, published or not published, registered or unregistered; Copyright-related rights arise since the performance, phonogram, video recordings, broadcasts, satellite signals carrying encrypted program is shaped or made without prejudice to the copyright.

The publication, dissemination of works, objects of related rights shall not infringe the State's and public interests, legitimate rights and interests of other organizations and individuals, and shall not violate other provisions of the relevant laws and regulations. This regulation is consistent with the provisions of Article 17 of the Berne Convention.

55. Do the requirements provided for under Article 26 of the Law on Intellectual Property regarding the application of compulsory licensing to broadcasting organizations under Article 26 apply to cinematographic works? If not, why are cinematographic works excluded? Please identify any other Vietnamese measures that could apply to the broadcast of cinematographic works

ANSWER: As stipulated in Clause 2, Article 11 bis of the Berne Convention, Article 26 of the Law on Intellectual Property regulates broadcasting organizations using published work to broadcast do not have to obtain permission but to pay royalty, remuneration. This provision does not apply to cinematographic works. Cinematographic work is not the type of work that is traditionally or by practice used to broadcast for public.

Broadcasting organizations using cinematographic works must obtain permission to broadcast and must pay royalty, remuneration for copyright owners of cinematographic works.

According to paragraph 3 of Article 20 of the Law on Intellectual Property, for broadcasting cinematographic works, the broadcasting organizations must obtain permission and pay royalties to the owners of cinematographic works.

Therefore, there is no exclusion of cinematographic works in the application of Intellectual Property Law.

Page 90, paragraph 3.175: The Secretariat indicated that "Viet Nam's Law on Intellectual Property provides protection of geographical indications... through registration at the NOIP."

56. What grounds exist for refusing, opposing, and cancelling a geographical indication in Viet Nam?
- a. Can Viet Nam confirm that an application for the protection of a term as a geographical indication will be refused if it is confusingly similar to a prior existing trademark in Viet Nam? Also, is this a ground available during opposition and cancellation proceedings?
 - b. Can Viet Nam confirm that it will refuse registration of an application for the protection of a term as a geographical indication that is generic in Viet Nam? Also, is this a ground available during opposition and cancellation proceedings?
57. Are geographical indications published for opposition in Viet Nam prior to registration and if so, where are they published?
58. Further, the Secretariat report indicates that "[t]he right to register GIs of Vietnamese origin and ownership rights belongs to the State." Please explain if Viet Nam will accept direct applications for GIs without government intervention.

ANSWER:

Grounds for refusing a GI

According to Article 117(a) of the IP Law, the grant of a Protection Title shall be refused in respect of a geographical indication in the cases there are grounds to confirm that the respective subject matter claimed in the application does not fulfill the protection requirements;

Grounds for opposing and cancelling a GI

According to Article 112 of the IP Law, as from the date an industrial property registration application is published in the Industrial Property Official Gazette until prior to the date of decision

on the grant of a Protection Title, any third party shall have the right to present opinions to the State administrative authority of industrial property rights in relation to the grant or refusal of a Protection Title in respect of the application. Such opinions must be given in written form and be accompanied by materials or must specify the source of information used for proving

According to Article 96.1 of the IP Law, a Protection Title of a GI shall be entirely cancelled in the cases the GI failed to satisfy the protection conditions at the grant date of the Protection Title.

According to Article 96.2 of the IP Law, a Protection Title of a GI shall be partly invalidated if that part failed to satisfy the protection conditions.

Article 96.3 of the IP Law provides that any organizations or individuals shall have the right to request the State administrative authority of industrial property rights to invalidate a Protection Title, provided that fees shall be paid.

Viet Nam confirms that an application for the protection of a term as a geographical indication will be refused if it is confusingly similar to a prior existing trademark in Viet Nam, particularly Article 80.3 of the IP Law provides that subject matters shall not be protected as geographical indications if identical with or similar to a trademark having been protected if their use will cause confusion as to the origin of the products.

This is a ground available during opposition and cancellation proceedings.

Viet Nam confirms that it will refuse registration of an application for the protection of a term as a geographical indication that is generic in Viet Nam, particularly Article 80.1 of IP Law provides that designations, indications shall not be protected as geographical indications if having become generic names of goods in Vietnam

Page 94, paragraph 3.193: The Secretariat's report notes that the number of infringement cases brought before the authorities and the monetary amounts of fines have fluctuated considerably in recent years.

59. What accounts for this variation and how does that affect the enforcement of intellectual property laws?

ANSWER: The monetary fines imposed by the authorities depend on the nature and level of the infringement and the monetary amounts of fines in a year depend on the number of the infringement case being handled. This is reason why the amounts of fines have fluctuated in recent years. This does not definitely affect the enforcement of intellectual property laws and regulations in Viet Nam.

4. TRADE POLICIES BY SECTOR

4.2. Agriculture

4.2.3 Policies

Page 101, paragraph 4.29: The Secretariat reports that "since acceding to the WTO, Viet Nam has not made any notification on domestic support or on export subsidies to the Committee on Agriculture."

60. When will Viet Nam submit these notifications?

ANSWER: Viet Nam has completed a report on domestic support or on export subsidies in 2007-2008 and has sent to WTO Secretariat for comments. The official notification will submit to the Committee on Agriculture in 2013.

Also Viet Nam is going to collect information on domestic support or on export subsidies in 2009-2012. The official notification will submit to the Committee on Agriculture in 2014.

4.5 Manufacturing

4.5.1 Textiles and Garments

Page 123, paragraph 4.101: Paragraph 286 of the Working Party Report on the Accession of Viet Nam states:

Some Members asserted that Decision No. 55/2001/QD-TTg provided prohibited subsidies to Viet Nam's textile and garment industries. In response, the representative of Viet Nam stated that no disbursement or subsidy benefit pursuant to Decision No. 55/2001/QD-TTg had been provided since 31 May 2006, and that Decision No. 55/2001/QD-TTg had been repealed on 30 May 2006. He also confirmed that Viet Nam would eliminate all prohibited subsidies (i.e., subsidies contingent upon export performance or the use of domestic over imported goods) to the textile and garment industries ... as of the date of accession. The Working Party took note of these commitments.

The Secretariat's report cites two legal measures relating to the textile and garment industries that appear to have been implemented since Viet Nam's accession to the WTO: (1) Decision No. 36/2008/QD-TTg (March 10, 2008), Approving the Strategy on Development of Viet Nam's Textile and Garment Industry to 2015, and Orientation Towards 2020; and (2) Decision No. 42/2008/QD-BCT (November 19, 2008), Approval of Plans to Develop the Garment and Textile Industry to 2015, and Orientation Towards 2020. These measures appear to target export growth and increases in local content, while also describing potential government financial support (e.g., state credit capital and state funding support for research) to the textile and apparel industry.

61. For each of these measures, please describe the policy objectives and the nature of any subsidy(ies) provided under these programs, and identify all implementing measures.
62. How do these measures substantively differ from Decision No. 55/2001/QD-TTg with respect to the policy objectives of increasing exports and local content, and specific government financial support measures?

ANSWER: Measures in Decision No. 55/2001/QD-TTg was abolished under Decision No. 126/2006/QD-TTg May 30, 2006. We will notify the legislation at the soonest time.

4.6 Services

4.6.5. Communications:

Page 138, paragraph 4.138: According to the Secretariat's report, "the [telecommunications] market is gradually opening in line with Viet Nam's GATS commitments." However, it is our understanding that Viet Nam's Decree 72 was scheduled to be implemented on September 1, 2013, undercutting the telecommunications commitments that were made in the GATS with respect to Internet Access Services. If implemented, this Decree could further restrict online information flow and the sharing of certain types of news and other speech. We believe that implementation of this Decree will harm Viet Nam's economy by constraining the development of businesses, limiting innovation and deterring foreign investment.

63. What steps is Viet Nam taking to ensure that this Decree will not affect the ability of internet service providers to continue offering news and social media that sustains the viability of a commercial internet market in Viet Nam?
64. What steps is Viet Nam taking to ensure that this Decree will not affect the free flow of online information necessary to support growth of electronic commerce?

ANSWER: The Decree No.72/2013/ND-CP replaced the Decree No. 97/2008/ND-CP helping to supplement and complete the regulations of management, supplying and the use of services and information on the internet in the way to promote competition, create fair and transparent business environment to enterprises and enhance informative safety and security on the Internet. The identification of a clear and transparent legal framework in association with the Law on Telecommunication and other guiding documents will facilitate the development of telecommunication and internet infrastructure in Vietnam, also establish a legal framework for the development of new forms of information to be in accordance with the actual development of the

internet in Vietnam, and ensure the preservation of traditional culture, protect public morals community, social order, repulsive

Page 141, Paragraph 4.147: The Secretariat's report notes Prime Minister Decisions No. 20/2011/QĐ-TTg and No. 18a/2013/QĐ-TTg regarding broadcasting. We note that the May 2013 Prime Minister decision prohibits the exhibition of foreign made commercials on foreign television channels.

65. Does Viet Nam similarly prohibit the exhibition of foreign advertisements on its domestic channels?
66. What was the rationale for prohibiting foreign advertising on foreign television channels?
67. Did Viet Nam consider its GATS advertising service commitments when the Prime Minister decision was taken to ban foreign advertising on foreign television channels?

ANSWER: Advertising generally and advertising on the television particularly must comply with the related provisions of the Law on Advertisement of Viet Nam (Law on Advertisement, Law No. 16/2012/QH13 dated 21/6/2012 of the Congress of the Republic Socialist Vietnam, with effect from 01/01/2013). Currently, there are no regulations banning the advertising of foreign products and services on local TV channels.

For advertising on pay TV channels, advertising activities (if any) must be conducted in Viet Nam and comply with the law of Viet Nam on advertising. It must do the financial obligations in accordance with the law of Viet Nam through an authorized dealer in Vietnam. This implementation is aim to ensure fairness between local channels and foreign channels obligations.

The issuance of these documents has been made on the basis of reviewing Vietnam's commitments in the WTO.

Page 142, paragraph 4.148: According to the Secretariat's report, since July 2010 the Amended Cinematography Law has required local film showings to be at least 20% of local cinemas' total film showings, and have priority during the popular 6 p.m. to 10 p.m. sessions every day; in the first 6 months of 2010, local filmmakers released only eight films, while 60 foreign films were screened at the cinemas.

68. Given the limited capacity for Viet Nam to produce movies, these restrictions on foreign films inhibit the ability of cinemas to operate profitably, which seemingly conflicts with Viet Nam's overall commitment to the development of a market based economy and with its GTS motion picture projection commitment. Please explain the rationale for these measures.
69. Please describe how Vietnamese authorities decide whether or not a cinema operator has given sufficient priority to domestically-produced films. Are those determinations made arbitrarily or are there standards that are being applied fairly to all cinemas? If so, please describe the standard used and where it is published.

ANSWER: Information on the Law on Cinematography in the report of the WTO Sectarat is not accurate. Concerning legal documents, there is only the Law amending and supplementing several articles of the Law on Cinematography no. 31/2009/QH12 which dated 18 June 2009 and took effect from 1 October 2009. The US question relates to Article 15.2 of Decree no. 54/2010/ND-CP which dated 21 May 2010 and took effect from 7 July 2010.

The ratio of films required in the Decree is not contrary to Vietnam's commitments in the WTO because:

- Audio and visual services are included in the List of MFN exemptions under Article II. 'Showing TV programs and works of cinema and producing and broadcasting audio visual works to the public' is included in this list.

- Regulations on the ration of films in Viet Nam are applied in a non-discriminatory manner between cinemas of domestic and foreign-invested enterprises. Therefore, in principle, the non-discrimination principle is not violated.
- Regulations on the ration of films in Viet Nam are applied in a non-discriminatory manner between cinemas of domestic and foreign-invested enterprises. Therefore, in principle, the non-discrimination principle is not violated.
- The regulation on film ratio is suitable with the demand for films of Vietnamese people. In the process of drafting this regulation, the Vietnamese government asked for comments from related businesses including local and foreign invested businesses and the Vietnamese government did not receive any protest from them.

Viet Nam requires the film ratio but Viet Nam has not applied this requirement because the number of local films is lower than imported ones. Viet Nam will apply the ratio of Vietnamese films in cinemas but there is no limit on foreign films imported and introduced in Vietnam.

Concerning assessment of the film ratio in cinemas, data on this ratio is based on annual reports of cinemas. However, as mentioned above, Viet Nam has not applied the requirement on film ratio.

4.6.7 Distribution services

Page 150, paragraph 4.174: According to the EU source document cited in footnote 356 of the Secretariat's report, "authorized foreign distributors are not allowed to distribute themselves the goods they import and are requested to use third party warehousing services, for which they face an extra barrier by having to provide all kinds of information to prove that the warehouses servicing them have all necessary government authorizations. This requirement does not apply to local distributors."

70. Please explain why Viet Nam forbids authorized foreign distributors to distribute goods they import themselves. Does Viet Nam forbid domestic manufacturers from distributing their own products?
71. Please explain why Viet Nam requires authorized foreign distributors to provide information relating government authorizations for third party warehouse services, but does not require the same information from domestic distributors.

ANSWER: According to the WTO commitment, Viet Nam agrees to grant full trading right to foreign traders whereby they are allowed to import or export goods except those are classified in Table 8 (a), 8(b) and 8 (c) in the Working Party Report. The foreign traders have to sell their imported goods to Vietnamese traders who have the right to distribute those goods.

The domestic manufacturers are allowed to distribute their own products. The same treatment is extended to foreign manufacturers that have establishments in Viet Nam.

Part II: Questions on the Government Report (WT/TPR/G/287)

2. ECONOMIC DEVELOPMENTS AND TRADE POLICY

2.2 Economic and Trade Policies

2.2.2. Implementation of WTO Accession Commitments

2.2.2.4 Trade-Related Intellectual Property Rights

Page 16, paragraph 2.50: The Government's report notes that Viet Nam notified the WTO and WIPO of amendments to its Intellectual Property Law as well as its Criminal Code "with a view to completing its IPR legal framework."

72. Can Viet Nam please detail how these amendments are being enforced?
73. The Secretariat report (paragraph 3.157) notes, however, that while Viet Nam notified amendments to the intellectual property rights legislation in 2010, amendments to the law

"made after 2010 have yet to be notified formally to the TRIPS Council," but were scheduled to be done "by June 2013." Please provide an update regarding the status of notification of all current IP laws and regulations to WTO.

ANSWER: Amendments made in regards to its 2008 legislation on IP laws include amendments to the IP Law, its guiding decrees and circulars and Criminal Code. All of legislative documents on IP have been notified to the TRIPS Council by August 2013.

Page 4, paragraph 1.5: The Government's report states, "FDI contributed to strong trade and economic growth by being at the core of the export base, by bringing capital, skills and training, by creating over one million jobs in foreign invested enterprises (FIEs) and raising incomes."

74. How many of those jobs created are occupied by foreign workers?

ANSWER: The only data available that might be relevant to the question is the number of foreign employees working in FDI enterprises in 2011, which is the first year ever in which such data were collected, as follows:

Employment of FDI enterprises as of 31/12/2011

(Unit: Person)

	2011	
	Total	Of which Female
Total employees	2550570	1714701
Of which foreign employees	40530	7243

Page 4, paragraph 1.8: The Government of Viet Nam states that "the creation of a level playing field for domestic and foreign players compelled significant changes in the legal system, which resulted in increased transparency, improved legislative and regulatory framework and strengthened legal predictability."

75. Can Viet Nam please provide examples of changes in the legal system that create "a level playing field for domestic and foreign players" that affect agricultural products such as alcohol, meat, and poultry, and consumer-oriented products?

ANSWER: Upon its accession to the WTO, Viet Nam amended laws and regulation on excise tax to create "a level playing field for domestic and foreign players" that affect agricultural products such as alcohol, meat, and poultry, and consumer-oriented products. Viet Nam also abolished the dual pricing mechanism on fees and charges for import and domestic goods. Viet Nam does not maintain any measures that discriminate the imported goods and the domestically produced goods.

76. Does Viet Nam plan to create and implement policies that would allow foreign importers to also possess licenses to legally distribute their product in Viet Nam?

ANSWER: Viet Nam fully complies with the commitment on trading rights where the foreign traders are allowed to import goods and sell them to the Vietnamese traders who have the distribution right in Viet Nam.

Page 5, paragraph 1.9: According to the Government report, the new Constitution requires, among other things, that "measures to guarantee human rights and citizen's rights must be adopted and strengthened."

77. In light of this, during the period under review, what laws or regulations have been issued affecting human/workers' rights, including occupational health and safety measures?

ANSWER: The Constitution of 1992 as amended in 2001 which, human rights and citizen' rights were drafted in separate chapter. According to the draft amendment of the Constitution of 1992, human rights and citizen's rights would be chapter 2 in the draft amendment of the Constitution. In this draft, many issues of human rights and citizens' rights are incorporated into this draft. After the new Constitution come in to effect, the National Assembly, Standing Committee of National

Assembly and Government shall adopt new legal documents or amend regulations affecting human/workers' rights, including occupational health and safety measures.

Page 13, Paragraph 2.33: We commend Viet Nam for its efforts to reduce tariffs in accordance with its WTO Accession Agreement ahead of schedule; however we are concerned that Viet Nam continues to raise the applied MFN tariff rate on certain products without prior notification to trading partners or sufficient communication to the affected commercial parties.

78. How does Viet Nam notify traders and companies regarding changes in the applied tariff rate for products?

79. How does Viet Nam ensure a transparent mechanism for publishing such notices so that all interested parties are aware of the tariff increase?

ANSWER: According to the Law on Promulgation of legal documents of Vietnam, before adoption, a draft text of legal document regarding changes in the applied tariff rate for products must be circulated to receive comments from relevant ministries and agencies. At the same time, such draft text will be uploaded on the official portal of the Ministry of Finance for comments by organizations and individuals in 60 days. Once legal document promulgated, it will be published on the Official Gazette to ensure a transparent mechanism so that all interested parties are aware of the tariff increase.

Page 14, paragraph 2.40: The Government's report references Circular No.8/2013/TT-BCT. This Circular appears to restrict the trading rights of foreign companies that do not have a commercial presence in Viet Nam. Essentially, Circular No. 8/2013/TT-BCT restricts foreign traders, wishing to export, from purchasing directly from producers (i.e. farmers).

80. What is the justification for restricting foreign entities from buying commodities directly from producers?

ANSWER: The export right stipulated under Circular 8 only restricts foreign traders wishing to export from organizing purchasing networks including open store to purchase export goods. They have rights to buy from producers if the producers have business licence or import right or distribution right. The Circular has expanded the export right for foreign traders, now they can export the goods imported legally.

This circular is in compliance with the WTO report of the working party on the accession of Viet Nam. Please refer to para. 146.

Page 14, paragraph 2.41: The Government's report notes that "Viet Nam has fully complied with WTO principles on customs fees, customs valuation determination pursuant to the WTO Customs Valuation Agreement..." However, it is our understanding that reference prices are being used for selected imports.

81. Please provide a list of those products for which reference prices are used.

82. How are the reference prices calculated? How often are they updated?

ANSWER: Database is one of important tools to assess the risks, detect fraud and tax evasion from declaring customs value lower than transaction value.

Items with the following criteria will be brought to the database: goods with high tax rates, large turnover, and high fraud in price.

The database is updated, adjusted regularly in line with the fluctuations of the market price.

The database is not used for price determination or imposing on custom value of goods and it's not the minimum price. Determining the Customs Valuation must comply principles and procedures of 6 methods of value determination of Agreement on Customs Valuation WTO.

Page 19, paragraphs 2.60-2.63: The Government's report highlights Viet Nam's efforts to promote new and renewable energies.

83. Does the Government of Viet Nam have any energy subsidies aimed at promoting certain types of renewable or other non-fossil energy sources (excluding nuclear)?

ANSWER: We have several incentives for the development of wind power which are stipulated in Decision No.37/2011/QD-TTg of June 29, 2012 provides mechanism on wind power development in Viet Nam, Decision No.18/2008/QD-BCT of July 18 2008 regulates cost indicators exempted and Model Commercial Contract for small power plants using renewable energy, Circular No.32/2012/TT-BCT of November 12 2012 regulates the implementation wind projects development and Model Commercial Contract for wind projects.

Part III: Other Questions

Resolution 18/NG-CP:

On 6 April 2010, the Government of Viet Nam issued Resolution 18/NQ-CP on "key measures to stabilize macro-economy, curb inflation and achieve a GDP growth rate of 6.5% in 2010." This document charged the Ministry of Industry and Trade with "reviewing the supply and demand of goods...and organizing the market to ensure that the flow of goods is in a smooth, cost-saving manner." Resolution 18 requires the Ministry of Industry and Trade to promulgate a list of dispensable import goods, non-encouraged for import, and coordinate with the State Bank of Viet Nam to ensure that foreign currency controls be put in place to limit these imports.

84. Please further explain how Viet Nam views Resolution 18 and all subordinate guidance (Decision 1380/QD-BCT dated 25 March 2011) in light of its WTO commitments. Specifically, please provide the methodology and rationale for selecting the over 1,500 tariff lines that Viet Nam considers discouraged for import.

85. Can Viet Nam provide the trade data for these tariff lines and explain the impact that this policy has had on import of what Viet Nam considers "non-encouraged" goods?

ANSWER: Regarding the reason for the issuance of Resolution 18 and Decision 1380/QD-BCT: answer as in question 5.

Resolution 18 was issued for the need of public in gathering detailed statistics in essential and non-essential goods.

List of "non-essential" imported commodities and consumer goods not encouraged for import issued by the Ministry of Industry and Trade of Viet Nam in Decision 1380 is a reference document for relevant ministries and agencies to develop policies consistent with WTO, such as increase or decrease in MFN tax in line with the international commitments of Vietnam; application of technical measures to trade in line with TBT Agreement in WTO.... This Decision of the Ministry of Industry and Trade of Viet Nam is not a legal and mandatory document.

The issuance of this Decision is completely not intended to restrict the provision of foreign currency loans to finance imports of the listed items. Current regulations do not allow the Government or the State Bank of Viet Nam to get involved in business activities of commercial banks and credit institutions. Commercial banks and credit institutions in Viet Nam have the right to decide, in accordance with current legislation, which enterprises to provide foreign currency loans to import goods (without any discrimination between essential and non-essential goods). As such, this decision does not restrict imports and does not breach WTO rules.

Regarding trade data for the tariff lines under the Decision 1380, please refer to the website of General Department of Customs: <http://www.customs.gov.vn/Lists/ThongKeHaiQuan/SoLieuThongKe.aspx?&Group=S%E1%BB%91%20li%E1%BB%87u%20th%E1%BB%91ng%20k%C3%AA>

Intellectual Property

Paragraph 403 of Viet Nam's Working Party Report indicated that, "Viet Nam confirmed that prior to the date of accession, Viet Nam would issue appropriate legal instruments mandating that all government agencies use only legitimate computer software and not infringe the copyright of such software. Such measures would regulate the acquisition and management of all software for use by government agencies. The representative of Viet Nam also confirmed that prior to the date of accession, Viet Nam would issue appropriate legal instruments mandating that all cable television purveyors provide only fully licensed products to their customers."

86. Can Viet Nam confirm that such measures have been implemented? Please provide references to the measures implementing these commitments.

ANSWER: Implementing commitments in paragraph 403 of the Working Party Report, on 22/02/2007, Viet Nam has issued Directive No. 04/2007/CT-TTg on strengthening copyright protection for computer programs.

Relating to the promulgation of legal documents to regulate television service providers are only allowed to provide fully licensed products to customers, in the process of accession negotiations, Viet Nam provided information and explanation which clearly stated that: the Law on Intellectual Property and the Decree 100/2006/ND-CP dated 21/09/2006 regulated broadcasting organizations must insure copyright and copyright related rights according to with laws and regulations.

87. Please describe the issuance of implementing guidelines for the revised Criminal Code so that prosecutions can commence cases in line with Viet Nam's WTO obligations, including by i) confirming that the Criminal Code applies to online distributions and all other violations of the IP Code, and ii) providing detailed interpretations of "commercial scale" infringements that include those undertaken without a profit motive.

ANSWER: Viet Nam promulgated the Law on amending and supplementing some articles of the Criminal Code of 27/2009/QH12, in which the regulations in Article 170a providing infringement of copyright and copyright related rights in consistence with the provisions of Article 61 of the TRIPS Agreement (for criminal proceedings), specifically:

"Those who are not authorized by owners of the copyright and copyright related rights implement one of the following acts of infringement of copyright and copyright related rights which are under protection in Viet Nam **at commercial scale**, is subject to a fine from fifty million to five hundred million dong or to non-custodial reform for up to two years:

- a) Reproduction of works, phonograms, video recordings,
- b) Distribution to the public copies of works, copies of phonograms, copies of video rerecordings.

Currently there are no specific regulations for infringement on "commercial scale" that include behavihour conducted without profit motivation.

88. Please describe how Viet Nam views Article 203 of the IP Code, which requires right holders to provide "necessary evidence proving basis [for] the establishment of copyrights, related rights, of which [a] Copyright Registration Certificate and Related Right Registration Certificate are consider[ed] as acceptable evidence," in light of the TRIPS Agreement.

ANSWER: "Paragraph 2 of Article 203 of the IP Law provides: " The plaintiff shall prove that he/she is the intellectual property right holder with one of the following evidence: copies of the copyright registration certificate, related right registration certificate". Article 49 of the IP Law also regulates: "Organizations and individuals that are granted certificates of registered copyright or certificates of registered related rights shall not have to bear the burden of proof of such copyright and related rights upon disputes, unless rebutting proofs are adduced."

Therefore, organizations and individuals that are granted certificates of registered copyright or certificates of registered related rights shall not have to bear the burden of proof of such copyright and related rights upon disputes, unless rebutting proofs are adduced.

Copyright, copyright related rights automatically arise not to depend on whether they are or not registered, and this is consistent with TRIPs.

89. Please describe how, in furtherance of paragraph 448 of Viet Nam's Working Party Report, "Courts having jurisdiction over violations and disputes in relation to intellectual property rights" have decided on the application of provisional measures since accession. Please describe how, pursuant to Article 207.1 of the 2005 Intellectual Property Law, provisional measures have been imposed including seizure, attachment, or sealing of goods suspected to infringe intellectual property rights, and of materials, raw materials or implements for producing or trading such goods. Please also describe whether the Court has ordered provisional measures to be taken on its own initiative or at the request of the Prosecution Institute or the parties concerned (Articles 99 and 119 of the 2004 Civil Procedure Code), and whether, pursuant to Article 206.2 of the 2005 Intellectual Property Law, the Court has, prior to hearing the opinion of the party liable for provisional measures, taken decisions which have also been effective immediately.

ANSWER: We will provide response to this question as soon as possible.

90. Please provide updates on Customs actions taken against copyright infringement since its accession, including actions taken with respect to infringement of foreign copyrights, remedies imposed, including detention, seizure, forfeiture, and destruction, and, if applicable, any fines imposed. Where applicable, please advise regarding criminal referrals arising out of these Customs actions.

91. What is the reason for the requirement under Vietnamese law to submit extensive information to Customs, which could impede many right holders from filing an application for suspension of infringing goods?

92. Please also describe the reason for the time period for right holders to respond to the detection of infringing goods (one day), and whether Viet Nam considers this to be too short?

ANSWER: Actions of Viet Nam Customs to combat against copyright infringements including international copyright infringements since its accession are pre-described in the Circular No.44/2011/TT-BTC. In which, Customs authority applies measures such as detention, seizure, forfeiture, destruction, imposing administrative penalty and criminal action.

So far, Customs has not received any requirement on copyright protection.

Regarding to criminal referrals arising out of these customs actions, please contact with other competent agencies like Ministry of public security, Department of market Management, Inspectorate of Ministry of Science and Technology, Ministry of Culture- Sport and Tourism for more details.

There is no requirement in Viet Nam law that the right holder are compulsory to submit extensive information to Customs. The Customs only requires the right holder a security in line with provisions and encourages them to provide the certification to show whether the consignment in suspension is true or fake and other documents such as identification, route, list of key importers, packing... to facilitate customs in inspection, control to recognize the infringements.

Under the current Viet Nam legislations, time period for right holders to respond to the detection of infringing goods is 03 days instead of 1 day. This time period is in line with TRIPs of WTO.

93. Please describe steps taken since accession to ensure that Viet Nam's laws provide criminal liability for all activities involving commercial scale piracy and provide the authority to their competent authorities, in criminal cases, to seize and destroy infringing goods and material and implements the predominant use of which had been in the commission of the offence.

ANSWER: We will provide response to this question as soon as possible.

94. Please describe how Viet Nam views Articles 202(5) and 214(3) of the IP Code, which provide that remedies for copyright infringement may include compelling the distribution or use for non-commercial purpose of the infringing goods, as well as the materials and equipment used in furtherance of the infringement, provided that such distribution does not affect the exploitation of rights by an aggrieved right holder, in light of Part III of the TRIPS Agreement.

ANSWER: Article 30 of Decree 105 provides for the compelled distribution or use for non-commercial purposes

1. The compelled distribution or use of intellectual property counterfeit goods or infringing goods for non-commercial purposes must satisfy the following conditions:

- a. The goods are useable;
- b. Infringing elements have been removed from the goods;
- c. Such distribution or use is for non-commercial purposes and does not unreasonably affect the normal exercise of the rights of the intellectual property right holder, where the purposes of humanity, charity and public interest shall be prioritized;
- d. Persons to whom goods are distributed or delivered for use are not potential customers of the intellectual property right holder.

2. The provisions of Clause 1 of this Article shall also apply to raw materials, materials and means for producing and trading intellectual property counterfeit goods or infringing goods.

FOLLOW-UP QUESTIONS FROM THE UNITED STATES

3.2.7. Import prohibitions, restrictions, and licensing

Pages 56 - 57, paragraphs 3.41 -3.44: As the Secretariat's report suggests, since Viet Nam's accession six years ago, Viet Nam has not fully notified or clarified its import licensing procedures in light of the WTO Import Licensing Procedures Agreement. The footnotes in the Secretariat's Report illustrate the extent to which questions seeking such clarification have not been satisfactorily answered. As such, Viet Nam's import licensing regime remains unclear and confusing.

1. With this in mind, when can we expect Viet Nam to fully explain its import licensing requirements in light of its obligations under the WTO Agreement on Import Licensing Procedures? Will Viet Nam provide a complete response to the Article 7.3 Questionnaire prior to the annual September 30th deadline?

ANSWER: Viet Nam endeavours to be in compliance to rules on WTO notifications, as well as notifications on import licensing. Viet Nam has made notifications on the regulations for automatic import license such as Circular 42/2010/TT-BCT; Circular 24/2010/TT-BCT; Circular 32/2011/TT-BCT; Circular 27/2012/TT-BCT; Circular 23/2012/TT-BCT. Viet Nam is trying to formulate an annual report on automatic import licence system for 2012 according to Article 7.3 and will send to WTO duly on 30 of September.

U.S. Follow-Up Question: We appreciate Viet Nam's response that it endeavours to be in compliance with its import licensing notifications, and we look forward to reviewing its responses notified under Article 7.3. We would kindly ask that Viet Nam confirm that it intends to include all

of its licensing procedures, whether they be automatic or non-automatic, in its Article 7.3 submission to the WTO?

ANSWER: Viet Nam has made the response verbally at the second day of the review.

Page 94, paragraph 3.193: The Secretariat's report notes that the number of infringement cases brought before the authorities and the monetary amounts of fines have fluctuated considerably in recent years.

1. What accounts for this variation and how does that affect the enforcement of intellectual property laws?

ANSWER: The monetary fines imposed by the authorities depend on the nature and level of the infringement and the monetary amounts of fines in a year depend on the number of the infringement case being handled. This is reason why the amounts of fines have fluctuated in recent years. This does not definitely affect the enforcement of intellectual property laws and regulations in Viet Nam.

U.S. Follow up question: In response to our question regarding the variations in the monetary amounts of fines, Viet Nam noted that fines imposed depend on the nature and level of the infringement and monetary amounts depend on the number of the infringement cases being handled. Are there any external factors to explain the considerable variations highlighted by the Secretariat report in the number of cases being handled from year to year?

ANSWER: There are no accurate analyses of what external factors accounts for the yearly variation of the infringement case numbers. However, to some extent, it could be explained that public awareness has been raised, cooperation among enforcement agencies has been improved.

3.4.10.2.3 Enforcement, Page 92, paragraph 3.189

EU questions 80 to 82: Could Viet Nam please indicate the number of criminal cases or prosecutions for IPR infringements that were taken in 2010, 2011 and 2012, respectively? Please indicate what steps Viet Nam has taken to improve its intellectual property enforcement regime since becoming a WTO Member in 2007? In addition, what steps does the Vietnamese government intend to take to increase the enforcement of IPR and speed up court proceedings on IPR infringement cases in Viet Nam in the immediate future?

ANSWER: During 2007-2010, Courts handled 11 cases, judged 8 cases. 02 persons were punished with penalty of non-custodial reform, 02 were sentenced to a suspended sentence, 06 were imprisoned three years or less, and 02 were imprisoned from 3-7 years.

Since becoming a WTO member in 2007, Viet Nam has taken important measures to improve its intellectual property enforcement regime, particularly:

- Upgrade the IPR legal framework by amending a series of legislative documents (IP Law, Criminal Code, guiding decrees, etc);
- Issue the National Action Plan on anti-IPR infringement (the Action Plan 168);
- Increase public awareness of IPRs by organizing workshops, training courses, programs on TV, etc
- Reform IPR related - administrative procedures.
- Enhance training to improve the professional qualification and skills for authorized staff.

U.S. Follow up Question: We also note that in response to question 80 and 82 submitted by the European Union, Viet Nam indicated that it has taken steps to improve its IPR enforcement regime, including "Reform IPR related administrative procedures." Can Viet Nam please provide clarification on such reforms? What specifically do they entail?

ANSWER: The program on simplification of administrative procedures has been implemented by the Government since 2010. Under this program, administrative procedures in all fields are reviewed and simplified as much as possible. In the field of intellectual property, all administrative procedures were reviewed and some were reformed for their simplification: with respect to procedures for invalidity and cancellation of the Protection Title of Industrial Property, certain requirements of submission of certain papers to the NOIP have been abolished and duration for processing the dossiers has also been shortened. Reforms of intellectual property-related administrative procedures have been concretized in the sub-laws.

According to Article 211.1.b of the IP law 2005, the administrative measures may be applied to the act of infringing upon intellectual property rights (not belonging to cases under a), c) and d) of the Article 211) with condition that the intellectual property right holder has issued a written notice requesting the termination of such act but infringer fails to do that. However, in the Revised IP law (2009) the condition of issuance of a written notice by IP right holder is abolished.

**UPDATED ANSWERS TO QUESTIONS FROM
CHILE, CHINA, THE DOMINICAN REPUBLIC, THE EUROPEAN UNION, JAPAN, AND
THE UNITED STATES REGARDING IP**

CHILE

Secretariat Report

3.4.10 Trade-related intellectual property regime

3.4.10.1.3 IP Authorities

Chile would appreciate clarification and more information on the "expert opinions to serve enforcement" by the National Office of Industrial Property

ANSWER: "Expert opinions to serve enforcement" by the National Office of Intellectual Property (NOIP) means that when it is required by enforcement authorities, NOIP will provide its opinions, as expertise of the State administrative authority regarding matter in question.

CHINA

Secretariat Report

Page 11 (Para 23)

The enforcement system in Viet Nam is highly complex. Regulation is provided through various legal and administrative texts, and the responsibilities for IPR enforcement are shared among a considerable number of central and local authorities. Issues such as counterfeited and pirated goods, and cable and satellite signal theft, remain matters of concern.

Questions:

What measures will Viet Nam take to protect the IPR of foreign investors?

ANSWER: Apart from civil and criminal measures, Viet Nam applies administrative measures for IPR infringement acts. Responsibilities of IPR administrative enforcement agencies are regulated clearly under the IP law and sub-laws.

The administrative enforcement regime applied to IPR infringement is an enforcement regime carried out by the public authorities, to subordinate criminal enforcement and shall be applied only to IPR infringing acts which do not constitute a crime.

Administrative, civil and criminal measures are applicable to protect IPR owners without any discrimination among domestic and foreign investors.

Page 87 (Para 3.160)

The NOIP is very active nationally and internationally, for example, in AWGIPC, within ASEAN, and in training and IP awareness campaigns, including public outreach actions. The NOIP has, inter alia, created a Distance Learning Program on IP. A recipient of technical assistance until recently, Viet Nam (through the NOIP) has become a provider of assistance, for example to Lao PDR.

Questions:

Concerning intellectual property right protection in the field of traditional medicine, what concrete policies and measures has Viet Nam adopted?

ANSWER: Traditional medicines are eligible for "traditional" IPR protection, particularly patent and utility solution protection, subject to protection requirements.

Viet Nam has no sui generic of intellectual property right protection for traditional medicines. Nevertheless Viet Nam has been making efforts for traditional medicines to benefit from current IPR protection as well as to be protected against abuse of IPR. For example, Viet Nam's laws require patent applicant to disclose related traditional knowledge. Particularly, Circular 01/2007/TT-BKHCN (Point 23.11) provides as follows:

"In addition to the general requirements applicable to any application for registration of an invention stipulated in clauses 23.1 to 23.6 above, in the case of any application for registration of an invention directly based on a genetic resource or traditional knowledge, there must be an explanation from the inventor or applicant about the genetic resource or traditional knowledge which the inventor or applicant accessed. If the inventor or applicant is unable to verify such genetic resource or traditional knowledge which the inventor or applicant accessed, then the author or applicant must so stipulate and shall be liable for the truthfulness of such statement."

DOMINICAN REPUBLIC

En el párrafo 6, página 11, se indica que *"Cuestiones tales como las mercancías falsificadas y piratas y el robo de señales de cable y de satélite siguen siendo motivo de preocupación."*

¿Qué disposiciones ha encaminado el gobierno de Viet Nam para contrarrestar la falsificación y la piratería para dar cumplimiento a las disposiciones del Acuerdo de Propiedad Intelectual (ADPIC) y de la Organización Mundial de Aduanas?

ANSWER: In order to counteract counterfeiting and piracy to comply with the provisions of the TRIPS, Viet Nam has been doing great efforts to strengthen its legal regime, enhance capacity of its authorities as well as raising public awareness. Please refer to our responses to other Members' questions on the same topic.

EUROPEAN UNION

3.4.10 Trade-related intellectual property regime

3.4.10.1 Overview

3.4.10.1.3 IP authorities

Page 87, paragraph 3.161

With reference to the IP authorities:

EU questions 71 and 72: Is the "principle of non-reliance" applied by the Vietnamese authorities in the context of clinical data protection? If yes, during which period of time? Do Vietnamese authorities allow generic manufactures for [indirect] reliance or reference to clinical data dossiers filed in foreign medicine agencies during the period of data protection in Vietnam?

ANSWER: "Principle of non-reliance" is applied by the Vietnamese authorities in the context of clinical data protection during 5 years (from the submission of the secret data to the authority to the end of 5-year period as from the date of marketing approval).

Vietnamese authorities do not allow generic manufactures for direct reliance or reference to clinical data dossiers filed in foreign medicine agencies during the period of data protection in Viet Nam.

3.4.10.2 Intellectual property

Paragraph 3.170 mentions the Law on Intellectual Property. With regard to Articles 84 and 128 of the Law on Intellectual Property on data protection for test data:

EU questions 73 and 74: With reference to the abovementioned articles of the law, could Vietnam clarify why the subsequent applicants for market authorisation cannot use the data of the original provider, while the relevant Vietnamese authorities can do so? Does this mean that the use of data (without the agreement of the original provider) by the Vietnamese authorities for granting the subsequent marketing authorisation is in line with the Vietnamese Law in force?

ANSWER: Only subsequent applicants for marketing approval cannot use the data of the original provider because IP law, in compliance with the TRIPS Agreement, provides that the authorities have obligation to take necessary measures so that such data are neither used for unfair commercial purposes nor disclosed. So, use of data by the Vietnamese authorities is in line with Viet Nam's Law in force.

3.4.10.2.2.1 Trade marks

Page 90, paragraph 3.174

EU question 75: Does Vietnam take measures against bad-faith registration of foreign brands (which are well-known abroad but not in Vietnam)?

ANSWER: Viet Nam applies Article 6 septies of Paris Convention against bad-faith registration of foreign brands (which are well-known abroad but not in VN). Additionally, recognized well-knownness abroad is one of criteria to be taken into consideration in determining well-knownness of a trademark to be protected in Viet Nam.

3.4.10.2.2.4 Patents for inventions

Page 91, paragraph 3.178.

EU questions 76 to 78: Do Vietnamese laws allow for patentability of pharmaceutical and chemical products? Can secondary medical use claims be patentable in Vietnam? Which databases are used by the examiners at NOIP to conduct substantive examination of patent applications?

ANSWER: Viet Nam provides patent protection for inventions, whether products or processes, in any field of technology, including in pharmaceutical and chemical field. "Use claim" is not allowed when it is unclear to be a product or a process. Regarding secondary medical use claims, a known product or known process are not patentable in Viet Nam because of lacking novelty.

NOIP conducts substantive examination of patent applications basing on following minimum mandatory information sources:

- IPAS, i.e. database of patent applications with earlier filing or priority date;
- GPI with support from EPO.
- Other patent databases available on the Internet.

3.4.10.2.3 Enforcement

Page 92, paragraph 3.189

Viet Nam has emphasized its commitment to tackling infringements of intellectual property rights (IPR) by developing a comprehensive set of laws to criminalize and combat such infringements. Vietnam's commitment on increasing enforcement of IPR in Viet Nam is appreciated and commended. Nonetheless, the issue of IPR infringement in Viet Nam remains one of concern to Members; therefore border measures on goods at least for import and export and both on demand and ex officio are very important.

EU question 79: Does Viet Nam envisage extending the scope of border measures beyond what is currently provided for in the VN law (only imports and on demand actions are provided for) as was recently announced by the VN Deputy DG of Customs Mr. Anh Ngoc Vu at 7th Global Congress on combating Counterfeiting and Piracy in Istanbul on 24-26 April 2013?

ANSWER: Viet Nam has been making efforts in strengthening IPR enforcement at the border. The scope of border measures are broaden (i) to cover infringing goods other than trademark counterfeit and copyright pirated goods (particularly GI counterfeit goods); and (ii) to *ex officio*

handle dementedly suspended goods of certain infringements by customs authorities (apart from demand suspension of suspected goods).

Such scope of border measures is broader than required by TRIPS and even broader than that of EU legislation and practice.

Based on territoriality principle of IPR protection, Viet Nam does not provide for prohibition, therefore border control, of exportation to other jurisdictions.

EU questions 80 to 82: Could Viet Nam please indicate the number of criminal cases or prosecutions for IPR infringements that were taken in 2010, 2011 and 2012, respectively? Please indicate what steps Viet Nam has taken to improve its intellectual property enforcement regime since becoming a WTO Member in 2007? In addition, what steps does the Vietnamese government intend to take to increase the enforcement of IPR and speed up court proceedings on IPR infringement cases in Viet Nam in the immediate future?

ANSWER: During 2007-2010, Courts handled 11 cases, judged 8 cases. 02 persons were punished with penalty of non-custodial reform, 02 were sentenced to a suspended sentence, 06 were imprisoned three years or less, and 02 were imprisoned from 3-7 years. Statistics of 2010, 2011 and 2012 respectively would be provided when available.

Since becoming a WTO member in 2007, Viet Nam has taken important measures to improve its intellectual property enforcement regime, particularly:

- Upgrade the IPR legal framework by amending a series of legislative documents (IP Law, Criminal Code, guiding decrees, etc.);
- Issue the National Action Plan 168/CTHD/VHTT-KHCN-NN&PTNT-TC-TM-CA dated 19 Jan 2006 on anti-IPR infringement (the Action Plan 168);
- Increase public awareness of IPRs by organizing workshops, training courses, programs on TV, etc.
- Reform IPR related - administrative procedures
- Build cooperation mechanism between enforcement agencies;
- Enhance training to improve the professional qualification and skills for authorized staff.

Such efforts are being continued.

EU questions 54 and 55: Could Viet Nam confirm that goods trans-shipped through its ports are also subject to IP protection rules and that the relevant authorities have the power to seize goods in Free Trade Zones (FTZs) which infringe trade mark or copyright legislation? Are goods trans-shipped through FTZs also subject to international disciplines agreed to by Vietnam?

ANSWER: Goods trans-shipped through Viet Nam's ports are also subject to IP protection rules and the relevant authorities have the power to seize goods which infringe trade mark or copyright legislation only when such goods turn out to be imported to Viet Nam (as provided for in Article 8.10 Circular 37/2011/TT-BKHHCN). More specifically, neither transiting nor exporting are deemed infringement under Viet Nam's laws.

JAPAN

Secretariat Report**3.4.10 Trade-related intellectual property regime****3.4.10.2 Intellectual property****3.4.10.2.3 Enforcement****(Question 8: Page 93, Paragraph 3.191)**

According to paragraph 3.191, remedies under Article 46 of the TRIPS Agreement are provided for in Article 214.3 of the IP Law and Articles 29 to 31 of Decree No. 105/2006/ND-CP in Viet Nam. At the same time, Clause 4 of Article 29 of Decree No. 105/2006/ND-CP provides that an infringement-handling agency may apply "appropriate measures" other than distribution or use for non-commercial purposes in accordance with Article 30 of the decree or destruction under Article 31 of the Decree. Could Viet Nam provide practical information about the above-mentioned "appropriate measures"?

ANSWER: "Appropriate measures" to be applied in each specific cases by competent authorities mentioned in Clause 4 of Article 29 of Decree No. 105/2006/ND-CP may include, besides other measures, forcible modification or addition of indications on industrial property as provided for in Article 3(3.f) of the Decree 97/2010/ND-CP and measures as agreed upon or proposed by involved parties not in contravention of the Law on Intellectual Property, not affecting the interests of a third party, consumers and the society, and accepted by a person with sanctioning competence as provided for in Article 36.1d (when the cases are handled by administrative agencies).

(Question 9: Page 94, Paragraph 3.193, Table 3.17)

Total numbers of IPR infringement cases are shown in Table 3.17. Such statistical data provides a good base for the planning of countermeasures against IPR infringements. It would be appreciated if Viet Nam could also provide the numbers of infringement cases for each authority.

ANSWER: Viet Nam will provide detailed statistics when they are be available.

UNITED STATES

Page 86, paragraph 3.157

The Secretariat's report notes that Viet Nam made amendments in regards to its 2008 legislation on IP laws but that they have yet to be notified formally to the TRIPS Council. Please explain what specifically those amendments were, and when Viet Nam intends to formally notify the TRIPS Council.

ANSWER: Amendment made in regards to its 2008 legislation on IP laws includes amendments to the IP Law, its guiding decrees and circulars and the Criminal Code. Those amendments have been notified to the TRIPS Council recently.

Page 87, paragraph 3.163

The Secretariat's report notes that Viet Nam has not yet signed the most recent treaties negotiated in WIPO or the trademark procedural treaties. Please further explain why Viet Nam has not yet signed these treaties, and whether there are any plans to take further action on these matters?

ANSWER: Viet Nam has been making efforts in doing research, including organizing seminars to find out when and under what conditions it would be ready to access to those treaties. For the time being Viet Nam does not have sufficient capacity to implement those treaties.

Page 89, paragraph 3.170

The Secretariat's report notes that with respect to the Law on Intellectual Property, implementing provisions are generally regulated by decrees and circulars.

a) What efforts have been made to increase the robustness of criminal decrees and circulars as a deterrent against intellectual property infringement?

ANSWER: The decrees guiding the implementation of the IP Law's provisions on enforcement as well the Joint-Circular 01/2008/TTLT-TANDTC-VKSNDTC-BCA-BTP providing the detailed guidelines to criminal prosecution of IPR infringing acts are specific enough for the direct application.

Penalties are strict enough and do act as a deterrent against intellectual property infringement. Viet Nam has been organizing seminars and training courses on those decrees and circular so as to have them effectively implemented.

b) How are Vietnamese judges trained on enforcing such measures designed to protect intellectual property?

ANSWER: Vietnamese judges are trained in different ways, including special courses, workshops, domestically and abroad.

c) Articles 7(2), 7(3) and 8(2) of the Law on Intellectual Property appear to grant the government of Viet Nam the authority to take away copyright protection from otherwise copyrightable works. While Article 17 of the Berne Convention allows governments to control/prevent the dissemination of copies of particular works, the Berne Convention provides for copyright protection for eligible works. Please explain how these provisions of the Law on Intellectual Property relate to Article 9.1 of the TRIPS Agreement, which incorporates Articles 1 through 21 of the Berne Convention, excluding Article 6bis of that Convention.

Page 90, paragraph 3.175

The Secretariat indicated that "Viet Nam's Law on Intellectual Property provides protection of geographical indications... through registration at the NOIP."

What grounds exist for refusing, opposing, and cancelling a geographical indication in Viet Nam?

ANSWER:

Grounds for refusing a GI:

According to Article 117(a) of the IP Law, the grant of a Protection Title shall be refused in respect of a geographical indication in the cases there are grounds to confirm that the respective subject matter claimed in the application does not fulfill the protection requirements set forth in Articles 79 and 80 of the IP Law;

Grounds for opposing a GI:

According to Article 112 of the IP Law and paragraph 6.1 Circular 01/2007/TT-BKHCN as amended 2013, as from the date an industrial property registration application is published in the Industrial Property Official Gazette until prior to the date of decision on the grant of a Protection Title, any third party has the right to oppose the grant, on the ground of right to registration, priority right, protection requirements and other matters related to the application.

Grounds for invalidating a GI:

According to Article 96.1 of the IP Law, a Protection Title of a GI shall be entirely invalidated in the cases the GI failed to satisfy the protection requirements at the grant date of the Protection Title.

According to Article 96.2 of the IP Law, a Protection Title of a GI shall be partly invalidated if that part failed to satisfy the protection requirements.

Can Viet Nam confirm that an application for the protection of a term as a geographical indication will be refused if it is confusingly similar to a prior existing trademark in Viet Nam? Also, is this a ground available during opposition and cancellation proceedings?

ANSWER: Article 80.3 of the IP Law provides that a term as a geographical indication which is identical with or similar to a protected mark, where the use of such geographical indications will cause confusion as to the origin of products shall not be protected as GI. This ground is also available during opposition and invalidation, but not cancellation proceedings.

Can Viet Nam confirm that it will refuse registration of an application for the protection of a term as a geographical indication that is generic in Viet Nam? Also, is this a ground available during opposition and cancellation proceedings?

Are geographical indications published for opposition in Viet Nam prior to registration and if so, where are they published?

ANSWER: Viet Nam confirms that it will refuse registration of an application for the protection of a term as a geographical indication that is generic in Viet Nam.

Article 80.1 of the IP Law provides for that names or indications shall not be protected as GI if they have become generic names of goods in Viet Nam. This is a ground available during opposition and invalidation, but not cancellation proceedings. More specifically, a registered GI will not be cancelled if it became generic after the date of registration.

Geographical indication applications having been accepted as valid by the State administrative authority of industrial property rights, namely National Office of Intellectual Property of Viet Nam, shall be published in the Industrial Property Official Gazette (Article 110 of the IP Law).

Further, the Secretariat report indicates that "[t]he right to register GIs of Vietnamese origin and ownership rights belongs to the State." Please explain if Viet Nam will accept direct applications for GIs without government intervention.

ANSWER: The provision on "the right to register GIs of Vietnamese origin and ownership rights belong to the State" just apply to Vietnamese GIs. Viet Nam accepts direct applications for foreign GIs without government intervention.

Page 94, paragraph 3.193:

The Secretariat's report notes that the number of infringement cases brought before the authorities and the monetary amounts of fines have fluctuated considerably in recent years. What accounts for this variation and how does that affect the enforcement of intellectual property laws?

ANSWER: The number of infringement cases brought before the authorities depends on number cases occurred. The monetary amounts of fines imposed by the authorities depend on seriousness of each case and the number of cases brought before the authorities. There are not accurate analyses of what accounts for the yearly variation of such numbers.

Government Report

Page 16, paragraph 2.50

The Government's report notes that Viet Nam notified the WTO and WIPO of amendments to its Intellectual Property Law as well as its Criminal Code "with a view to completing its IPR legal framework."

a) Can Viet Nam please detail how these amendments are being enforced?

ANSWER: To ensure that the amendments to the IP Law to be effectively enforced, Viet Nam has made the following efforts:

- Revising decrees and circulars guiding the implementation of the amendments;
- Introducing amended legislative documents on IP to the public through workshops, training courses, public education programs on mass media, etc.

b) The Secretariat report (paragraph 3.157) notes, however, that while Viet Nam notified amendments to the intellectual property rights legislation in 2010, amendments to the law "made after 2010 have yet to be notified formally to the TRIPS Council," but were scheduled to be done "by June 2013." Please provide an update regarding the status of notification of all current IP laws and regulations to WTO.

ANSWER: Amendments to the IP legislation made after 2010 have been notified to the TRIPS Council recently.

Working Party Report:

Please describe the issuance of implementing guidelines for the revised Criminal Code so that prosecutions can commence cases in line with Viet Nam's WTO obligations, including by i) confirming that the Criminal Code applies to online distributions and all other violations of the IP Code, and ii) providing detailed interpretations of "commercial scale" infringements that include those undertaken without a profit motive.

ANSWER: The Joint-Circular 01/2008/TTLT-TANDTC-VKSNDTC-BCA-BTP providing the detailed guidelines to criminal prosecution of IPR infringing acts and IP-related Articles in the Criminal Code ensures Viet Nam's compliance with WTO's obligations to criminalize copyright piracy and trademark counterfeiting on commercial scale.

Could US explain how WTO obligations include criminalization of i) online distributions and all other violations of the IP Code, and ii) providing detailed interpretations of "commercial scale" infringements that include those undertaken without a profit motive?

Viet Nam's laws and regulations, does not provide detailed interpretation of the term "commercial scale" and leaves it to the judges to decide, like most other countries in the rest of the world. In Viet Nam's view "commercial purpose" or "profit motive" factor are not enough for "commercial scale", because among infringing acts with commercial business purpose, there are acts of merely civil disputes in nature and cannot be criminalized.

4. Please describe how, in furtherance of paragraph 448 of Viet Nam's Working Party Report, "Courts having jurisdiction over violations and disputes in relation to intellectual property rights" have decided on the application of provisional measures since accession. Please describe how, pursuant to Article 207.1 of the 2005 Intellectual Property Law, provisional measures have been imposed including seizure, attachment, or sealing of goods suspected to infringe intellectual property rights, and of materials, raw materials or implements for producing or trading such goods. Please also describe whether the Court has ordered provisional measures to be taken on its own initiative or at the request of the Prosecution Institute or the parties concerned (Articles 99 and 119 of the 2004 Civil Procedure Code), and whether, pursuant to Article 206.2 of the 2005 Intellectual Property Law, the Court has, prior to hearing the opinion of the party liable for provisional measures, taken decisions which have also been effective immediately.

ANSWER: The court shall decide to apply provisional urgent measures at the request of the IP holder before listening to the party subject to such measures (Article 206 (2) of the IP Law) or decide to apply those measures on its own initiative or at the request of the Prosecution Institute or the parties concerned (Articles 99 and 119 of the 2004 Civil Procedures Code).

Article 207.1 of the IP Law just provides provisional measures applicable to goods suspected of infringing upon intellectual property rights or to the materials, raw materials or implements for producing or trading such goods including (a) seizure, (b) attachment, (c) sealing, prohibition of changing status or displacing; (d) prohibition of transferring ownership.

Court takes provisional measures at the request of interested party during resolution of a case to provisionally resolve the urgent petition of the concerned party, to protect evidence, to preserve the status in order to avoid irrecoverable damage or to secure legal execution (Article 99 of the Civil Prosecution Code).

Court only applies provisional measures on its own initiative in cases where the interested party does not request for the application of provisional measures (Article 119 of the Civil Prosecution Code).

Pursuant to Article 206.2 of the IP Law, the Court has, prior to hearing the opinion of the party liable for provisional measures, taken decisions which have also been effective immediately.

5. Please provide updates on Customs actions taken against copyright infringement since its accession, including actions taken with respect to infringement of foreign copyrights, remedies imposed, including detention, seizure, forfeiture, and destruction, and, if applicable, any fines imposed. Where applicable, please advise regarding criminal referrals arising out of these Customs actions.

- What is the reason for the requirement under Vietnamese law to submit extensive information to Customs, which could impede many right holders from filing an application for suspension of infringing goods?
- Please also describe the reason for the time period for right holders to respond to the detection of infringing goods (one day), and whether Viet Nam considers this to be too short?

ANSWER: Could US explain the question about "requirement under Viet Nam's law to submit extensive information to Customs"?

According to the IP law, imported goods can be suspended only at request of IP owner, with security deposit.

6. Please describe steps taken since accession to ensure that Viet Nam's laws provide criminal liability for all activities involving commercial scale piracy and provide the authority to their competent authorities, in criminal cases, to seize and destroy infringing goods and material and implements the predominant use of which had been in the commission of the offence.

ANSWER: Since accession to WTO in order to ensure that Viet Nam's laws provide criminal liability for activities involving commercial scale piracy, in 2008 Viet Nam issued the Joint-Circular 01/2008/TTLT-TANDTC-VKSNDTC-BCA-BTP issued providing the detailed guidelines to criminal prosecution of IPR infringing acts in order to comply with TRIPS (Article 61). Accordingly, the crimes of wilful trademark counterfeiting and piracy on a commercial scale are ensured to be prosecuted in consistence with the requirement of the TRIPS.

For the purpose of overcoming thoroughly the shortcomings existent in the Criminal Code 1999, in 2009, Viet Nam promulgated amendment to Criminal Code 1999 with IPR crime-related provisions (Article 170.a and 171).
