KEY TRADE POLICIES OF VIETNAM

Ms. Pham Quynh Mai, APEC-ASEM Division, Multilateral Trade Policy Department, Ministry of Trade

I. Tariff

Since Vietnam has embarked on its renovation, Viet Nam's tariff schedule had been modified several times since then in response to the economy's development needs. The number of tariff bands had been reduced, as well as the number of tariff lines subject to zero tariff.

The Harmonized System Convention had come into force in Viet Nam on 1 January 2000, making Viet Nam's tariff nomenclature in full compliance with the HS 1996 nomenclature at the six-digit level. New tariff nomenclature had been issued by virtue of Decision No. 82/2003/QD-BTC of 13 June 2003 in accordance with ASEAN Harmonized Tariff Nomenclature (AHTN) at eight-digit level which was in full consistency with HS 2002.

Viet Nam's trading partners were subject to tariff treatment at the preferential, MFN or standard rate (also referred to as normal or non-MFN rate). The Standing Committee of the National Assembly had adopted the Ordinance on Most Favoured Nation and National Treatment on 22 May 2002, which required Viet Nam to comply with MFN and national treatment provisions of international treaties.

Vietnam is under the accession process to WTO and considering its plans of bound tariffs for market access negotiations with its WTO counterparts. Current preferential import list of Vietnam comprises of 97 chapters and 6521 items (up to March 2003).

II. Non-tariff measures

Vietnam is prohibiting the import of the following goods:

- Arms and ammunition, explosives (except for industrial explosives as separately stipulated by the Prime Minister in the Document No 1535/CP-KTTH dated 28 December 1998), military equipment.
- Drugs
- Toxic chemicals
- Depraved and reactionary cultural products, children toys that may have negative effects on their dignity and social order and safety.
- Firecracker of all kinds (except for signal fires used for marine safety and other needs specified in the documents No 1383/CP-KTTH dated 23 November 1999 by the Prime Minister)
- Cigarettes, cigar and other tobacco products
- Second-hand consumer goods, including:
  - Clothing, foot wares, garments.
  - Electronic goods

- Electric refrigeration products
- Electric appliances
- Interior decoration

- Household equipments made from china, ceramics, porcelain, glass, metal, plastic, rubber, resin and other materials.
- Right steering-wheel vehicles (including those disassembled and converted into left steering wheel before being imported into Vietnam), except for some self-propelled and special purpose right steering-wheel motor vehicles operating in short distance including: crane lorries, channel and gutter diggers, road cleaning lories, dumpers, road-building lorries, airport passenger carriers, cargo-lifting vehicles.
- Second-hand materials and vehicles
- Articles and materials of asbestos of the amphibole group.
- Professional machines and softwares used within the Government secret.

The prohibition of import of those commodities aims to protect national security, social order and safety, traditional culture, fine customs, health of human beings and animals and environment.

Vietnam *prohibits the exports* of the following goods:

- Arms and ammunition, explosives (except for industrial explosives), military equipment.
- Antique
- Narcotic (drug) of all kinds
- Toxic chemicals
- Log and chipped wood coming from domestic natural forests, fire wood, charcoal made from wood or fire wood coming from domestic natural forests
- Wild animals, scarce and precious natural animals and plants.
- Professional machines and softwares used within the Government secret.
- Goods prohibited from export under the list of goods subject to professional control of the Ministry of Agriculture and Rural Development, Ministry of Fishery, Ministry of Culture and Information under Decision No 46/2001/QD-TTg dated 4 April 2001 on controlling export and import in the 2001-2005 period.

For wood coming from domestic natural forests, the prohibition of export aims to reserve the natural forest and the environment.

The prohibition of export of toxic chemicals aims to reserve the human and animal health.

The prohibition of antique, things of museums and historical and cultural places, statues of Buddha and worshipping objects made of all materials coming from worshipping places of all religions (pagodas, temples, churches...) aims to protect national cultural heritages and national religious heritages.

The prohibition of export of books, films, movies, video films, recorded objects or other visual audio data (CD, VCD, DVD, cassettes...) and other cultural publications aims to protect social safety and order.

Vietnam is maintaining the import surcharges/fees on the following goods:

- DOP
- PVC
- Welded and zinc-galvanized pipes and tubes in steel
- Paperboards and flat cartons used for packing, having a maximum horizontal pressure resistance of 3 kgf/cm2 and vertical pressure resistance of 14 kgf
- Sanitary ceramic wares
- Drinking glasses, cups and kitchenware of porcelain or china
- Drinking glasses, cups and kitchenware of glass other than of lead crystal.
- Table, floor, ceiling, wall and roof fans of a power below 100W
- Glass inners for commonly-used vacuum flasks of a capacity not exceeding 2.5 litre
- Commonly-used vacuum flasks of a capacity not exceeding 2.5 litre, (other than piston vacuum flasks and self-boiling vacuum flasks)
- Uncoated printing paper, writing paper
- Ceramic and granite flooring tiles

Goods subject to import licensing by the Ministry of Trade in the 2001-2005 period:

- Goods subject to import control under regulations of international treaties to which Vietnam is a signatory, declared by the Ministry of Trade for each period.
- Some kinds of glass
- Some kinds of steel.
- Some kinds of liquid vegetable oil
- Refined sugar, raw sugar
- Petroleum
- Clinker

- Fertilizer
- Paper
- Motors/engines
- Motorbikes and accessories
- Tiles
- Some kind of materials

Vietnam imposes discretionary export licensing on garments according to quotas that Vietnam has negotiated with foreign partners, declared by the Ministry of Trade for each period.

Based on annual agreement with international organizations and foreign partners on quotas and conditions to export garments, the Ministry of Trade cooperates with relevant Ministries and Agencies to formulate and issue common regulations on the use of garments quotas.

Vietnam does not impose voluntary export restraint arrangements.

1. Focal point mechanism for exporting and importing:

- Petroleum

Goods subject to professional management include:

The State Bank assigns enterprises to allow import of some goods under Decision No 46/2001/QD-TTg.

Goods subject to management of the State Bank include:

- Special cars for carrying money.
- Multi-functional devices for counting, classifying, bundling and shredding money.
- Treasury door.
- Ink for printing money.
- Machines for printing hard-to-forge money, payment vouchers, certificates and other valuable paper to be issued and managed by the banking industry.
- Money printers (technical specifications announced by the State Bank)

2. Conformance certification:

Some goods under the control of the Ministry of Post and Telecommunication (General Department of Post in the past) are subject to conformity certification. The conformity certification is valid for minimum of 2 years. During the effective period of the conformity certificates, goods are imported in line of the certificates without any limitations of quantities or values. (Circular no. 02/2001/TT-TCBD dated 25 April 2001 guiding the Decision no. 46/2001/QD-TTg dated 4 April 2001 of the Prime Minister on the export import management over goods subject to line management of General Department of Post for the 2001-2005 period)

3. Line management:

To ensure product safety and sanitary requirements, technical standards, product dimensions and export/import conditions. Ministries of line management of goods include:

Ministry of Agriculture and Rural Development (MARD): applies testing licence, to base on the testing results to allow or not allow the use of the goods in Vietnam. Once allowed by the MARD to be used in Vietnam, the goods are imported according to the demand without any limitation in quantity, values or import licences.

III. Trade in Services

The Law on Foreign Investment was amended in 2000, making a contribution to enhance and synchronize the investment encouraging and guaranteeing mechanism and policies of current legal system; to create common legal surface between domestic and foreign investment; to increase the transparency and predictability of legal framework for foreign investment...

Foreign managers, executive directors and experts of foreign service-providing organizations establishing representative offices, branches or subsidiaries in Vietnamese territory, who can’t be Vietnamese by nationality instead, are allowed to immigrate and reside in Vietnam in the first 3 year period. The duration may be prolonged due to the operation requirements of the subjects (enterprises)

Foreign managers, executive directors and experts of foreign service-providing organizations who can’t be Vietnamese by nationality instead, engaging in foreign directly invested enterprises allowed to immigrate and reside in Vietnam in a proper time period in conformity with regulations of investment contracts or in the first 3 year period, due to the shorter time. The duration may be prolonged subject to the employment contract between these individuals and the subjects (enterprises).

Business visitors: Those who work for service-providers without establishments (trade representatives) in Vietnamese territory, don’t receive salaries from any Vietnamese source and engage in activities related to the representative of a service-provider aiming at service-selling negotiations, or business opportunity research are allowed to immigrate and reside within 90 days provided that they don’t (i) directly provide services for public sector; and (ii) directly involve service providing.

Service providers: Those who work for service-providers without establishments (trade representatives) in Vietnamese territory, don’t receive salaries from any Vietnamese source, engage in service-providing under service-providing contracts between their enterprises and Vietnamese one, don’t directly collect money for their service-providing, don’t work for any other foreign enterprise which has a trade representative are allowed to immigrate and reside in Vietnam in a specific time in conformity with the contract’ s regulations and not in excess of 90 days.

Foreigners working in Vietnam are allowed to meet such requirements as follows:

- High professional knowledge in excess of Vietnamese capacity
- 18 years old at least, enough health, no police record.

Government Decree No. 63/1998/ND-CP dated 17 August 1998 on foreign exchange controls and Government Decree No. 05/2001/ND-CP dated 17 January, 2001 amending some regulations of Decree No. 63/1998/ND-CP, provide regulations on foreign exchange controls as follows:

- Opening accounts: Residents and non- residents who are organizations currently operating in Vietnam are allowed to open and remain a foreign currency account at an allowed bank; use the foreign currency balance for making payments overseas for imported goods and services and making payments to domestic organizations and individuals who are allowed to invoice in foreign currency for goods purchased and services rendered.
- Residents and non-residents: who are individuals receiving foreign currency notes on entering into Vietnam with a confirmation of a custom office or have other legitimate foreign currency income in Vietnam are allowed to: (i) store and keep; (ii) deposit into banks in forms of opening an individual foreign currency accounts.
- Residents who are individuals having foreign currency where its source is not mentioned above are permitted to deposit that foreign currency at banks in the form of foreign currency savings accounts and not in the form of individual foreign currency accounts.
- Foreign investors are allowed to remit outward foreign currencies to service overseas debts including principal, interest, charges stated in the loan contract signed with the foreign lenders as well as investment and reinvestment capitals, profits and other legal income in conformity with regulations of the Law on Investment of Vietnam.
- Vietnamese investors are permitted to remit outward foreign currencies from exported goods and services to make investment.
- Vietnamese investors abroad are permitted to annually remit their profits and other legal income back to Vietnam within 6 months since the end of the financial year of foreign invested economies in accordance with legal regulations.
- Residents who are Vietnamese economic organizations, foreign invested enterprises and foreign parties involved in Business Cooperation Contract ... must sell foreign currencies from current income sources for allowed banks in accordance with the regulation of the Prime Minister; to buy foreign currencies at allowed banks with a view to meet current transactions on a basis of submitting legitimate documents
- Non- residents who are foreigners receiving legal income in foreign currencies are permitted to remit outward, or to buy foreign currencies at allowed banks in the case of the income in VND.
- Individuals on exiting Vietnam carrying foreign currencies in cash exceeding the specified level, must declare to the Custom or must have a foreign currency carrying license issued by the State Bank in a case the amount carried exceeds the limit subject to frontier-pass declaration.

- Residents who are Vietnamese economic organizations, foreign invested enterprises and foreign parties involved in Business Cooperation Contract... guaranteed for foreign currency balancing support by the Government, must sell at least 80% of total foreign currencies from current income sources for allowed banks.

Overseas repayment and profits remittance are required a license for transferring foreign currency overseas of the State Bank.

Tax rate on overseas profits remittance are specified as follows:

- 5% in case of registered capital more than USD 10.000.000
- 7% in case of registered capital between USD 5.000.000 and USD 10.000.000
- 10% in case of registered capital less than USD 5.000.000

Trade representatives of foreign service-providing organizations in Vietnam are established in such following forms:

- Business Cooperation Contract (BCC);
- Representative office;
- Joint venture enterprise;
- 100% foreign invested enterprise.

Representative offices of service-providing organizations in Vietnam are not permitted to do business activities for profit earnings in Vietnam.

The share of the foreign counterpart or counterparts shall not be below 30% of the total registered capital of a joint venture except other cases in accordance with the Government's regulations. The operation duration of foreign invested enterprises and BCCs are regulated in investment licenses on a case basis in accordance with the Government's regulations but not in excess of 50 years. Based on regulations of Standing Committee of National Assembly, the Government may decide to prolong the operational duration on a project case basis, but not in excess of 70 years.

Foreign invested enterprises and foreigners are only allowed to hire land and to own real estates (except land), but not to receive the collateral of land use rights in specified duration in licenses.

Under the Law on Investment, General Directors or the 1st Deputy General Directors of a joint venture enterprises must be a Vietnamese citizen foreign invested enterprises and foreign parties participating in BCCs are allowed to make recruitment on the basis of business requirements provided that the recruitment priority is granted for Vietnamese citizens. They are only to employ foreigners to do high professional knowledge and management work exceeding the Vietnamese capacity to do. However, they have to train instead Vietnamese staff.

The number of foreign staff is not allowed to exceed 18% of the total technological experts in foreign service-providing organization in Vietnam.

Foreign service-providing organizations in Vietnam have to comply with specific regulations of Vietnam law for foreigners including regulations on taxes, prices of some service provision.

Value added tax rate popularly applied in the service sector is 5% (except the case of duty free and fulfilment of special consumption tax obligations)

IV. Investment

Foreign investor may invest in any of the forms: Business cooperation on the basis of a business cooperation contract (BBC) or Joint venture enterprise or 100% foreign owned enterprise, except some fields not allowed to have 100% foreign capital such as telecommunication services, investigation and exploitation of oil and gas, minerals, rare and precious metals, consulting services, transport services, production of explosive, afforestation, travelling and culture.

Foreign invested enterprises have the right to reorganize their business (division, merger, demerger, consolidation). Joint-venture with foreign investment is not yet applied, however the equitization of existing enterprises is under consideration (Menu1.01&02).

Field and area subject to encouragement or investment restrictions:

Vietnam promulgate the following lists:

1. List of special projects subject to investment encouragement;
2. List of projects subject to investment encouragement;
3. List of areas subject to investment encouragement;
4. List of investment areas with conditionality;
5. List of areas not subject to investment license

Depending on the field of investment, foreign investors are granted investment preferences or obliged to meet all investment conditions. The above list can be found in Decree 27/2000/ND-CP dated March 19, 2003 at website: *www.mpi.gov.vn/fdi*

Ensuring investment and term of investment:

Vietnam gives investors many investment safeguard measures such as equal treatment among investors on the principle of MFN, ensuring rights in terms of capital and property of investors not to be nationalized by administrative means (except for public interests) on a non-discriminatory basis and timely and appropriate compensation; protecting the rights of investors against changes in Vietnam's law as well as the rights to transfer benefits and legal properties of investors.

Term of the project is decided by the investor but it is at 50 years or 70 years at maximum (in special cases approved by the Standing Committee of the National Assembly).

On prior authorization requirement:

Vietnam still maintains the assessment on issuing Investment License with foreign investment project with the term of 30 to 45 working days depending on the project's nature. However, some foreign investment projects meet one of the following conditions: (i) attain the exporting rate of 80% and above; (ii) invest in Industrial zone not belonging to Group A and belonging to the list of investment encouragement; (iii) belong to the production field with investment capital up to USD 5 billion.

Involving other economies:

By the end of 2002, Vietnam has signed the Investment Protection and Encouragement Agreement with 46 countries and territories, including 11 APEC member economies, participating in the framework agreement on ASEAN Investment Area (AIA) and still under the process of negotiation for WTO accession.

The State of the Socialist Republic of Vietnam shall guarantee that foreign investors investing in Vietnam are treated fairly and equitably.

The MFN treatment has been provided for in the Law on Foreign Investment in Vietnam and in all Vietnam's IPPAs (Menu 3.01).

Vietnam is carrying out the commitments under the ASEAN Framework Agreement on Investment Area with a view to opening industries and providing national treatment to Asean’s investors in 2013 and non-Asean's investors in 2020.

Vietnam is in the process of gradually narrowing down the sectors and matters which are exceptions to NT treatment for domestic and foreign investors.