

10 November 2020

(20-8040)

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**Council for Trade in Goods  
Working Party on State Trading Enterprises**

Original: English

## STATE TRADING

### NOTIFICATION OF VIET NAM IN RESPONSE TO THE UNITED STATES' COUNTER-NOTIFICATION OF VIET NAM'S STATE TRADING ENTERPRISES PURSUANT TO PARAGRAPH 4 OF THE UNDERSTANDING ON THE INTERPRETATION OF ARTICLE XVII<sup>1</sup>

### UNITED STATES FOLLOW-UP QUESTIONS TO VIET NAM'S REPLIES<sup>2</sup> TO FURTHER QUESTIONS FROM THE UNITED STATES REGARDING VIET NAM'S STATE TRADING ENTERPRISES

The following communication, dated 2 November 2020, is being circulated at the request of the Delegation of the United States.

The United States thanks Viet Nam for its replies to our questions and presents the following follow-up questions:

#### **Follow-up Question 1**

In its reply to US Question 1-2 regarding Vinafood I, Viet Nam stated that Announcement No. 78/TB-VPCP (dated 9 March 2009), under which Vinafood I is assigned a special or exclusive privilege to export rice to the Iraqi market, "holds no validity during the notification period (2012-14) stated in document G/STR/N/15/VNM of Viet Nam." With this reply, Viet Nam appears to be stating that the special or exclusive privilege assigned to Vinafood I did apply for earlier periods. As noted in our 2018 counter-notification<sup>3</sup> and replies to Viet Nam's responses<sup>4</sup>, the counter-notification covered the entire period of 2006 to 2016. Therefore, Viet Nam's reply does not speak to whether Vinafood I should have been notified before 2012.

Given Viet Nam's apparent acknowledgment that a special or exclusive privilege did apply to Vinafood I before 2012, will Viet Nam be providing a full notification for any of the earlier periods for which it has not fulfilled its notification obligation?

#### **Follow-up Question 2**

Similarly, in its reply to US Question 1-2 regarding Vinafood II, Viet Nam stated that Announcement No. 24/2011/TB-LPQT (dated 18 April 2011), under which Vinafood II is assigned a special or exclusive privilege to export rice to The Philippines, "holds no validity during the notification period (2012-2014)." With this reply, Viet Nam appears to be stating that the special or exclusive privilege

<sup>1</sup> See G/STR/N/15/VNM and G/STR/N/16/VNM (original notifications of Viet Nam) (dated 15 April 2016); G/STR/Q1/VNM/4 - G/C/W/750 (United States' counter-notification) (dated 9 January 2018); G/C/W/755 - G/STR/Q1/VNM/5 (Viet Nam's notification in response to United States' counter-notification) (dated 27 August 2018); G/C/W/755/Corr.1 - G/STR/Q1/VNM/5/Corr.1 (corrigendum) (dated 25 September 2018); G/C/W/760 - G/STR/Q1/VNM/6 (further questions posed by the United States in response to Viet Nam's response to the counter-notification from the United States) (dated 9 October 2018); and G/C/W/776 - G/STR/Q1/VNM/7 (Viet Nam's responses to further questions posed by the United States in response to Viet Nam's response to the counter-notification from the United States) (dated 5 March 2020).

<sup>2</sup> G/C/W/776 - G/STR/Q1/VNM/7 (dated 5 March 2020).

<sup>3</sup> G/C/W/750 - G/STR/Q1/VNM/4 (dated 11 January 2018).

<sup>4</sup> G/C/W/760 - G/STR/Q1/VNM/6 (dated 9 October 2018).

assigned to Vinafood II did apply for earlier periods. As noted in our 2018 counter-notification and replies to Viet Nam's responses, the counter-notification covered the entire period of 2006-2016. Therefore, Viet Nam's reply does not speak to whether Vinafood II should have been notified before 2012.

Given Viet Nam's apparent acknowledgment that a special or exclusive privilege did apply to Vinafood II before 2012, will Viet Nam be providing a full notification for any of the earlier periods for which it has not fulfilled its notification obligation?

### **Follow-up Question 3**

In its reply to US Question 1-2, Viet Nam did not reply to two of our questions. Therefore, we will state our questions again:

- (a) Each entity's charter states that it may "[e]njoy subsidies, price supports or other state preference policies when undertaking duties for the public interest, defense, security, food security, natural disaster prevention or supply of products or services according to State price policy."<sup>5</sup> For example, in Office of the Government Announcement 5159/VPCP-KTN, the Prime Minister stated that "[t]he Southern and Northern Food Companies are required to immediately develop measures to purchase approximately 400-500 thousand tons of rice in August 2008."<sup>6</sup> In light of these two entities' apparently exclusive or special rights or privileges, could Viet Nam please explain why it does not view these entities as STEs?
- (b) Viet Nam asserts that Office of the Government Announcement 78/TB-VPCP and Office of the Government Announcement 5159/VPCP-KTN are not legal normative documents and that they have no legal effect in the period of notification. Is Viet Nam representing that orders from the Prime Minister do not carry legal authority?<sup>7</sup>

### **Follow-up Question 4**

In its reply to US Question 4 regarding Viet Nam National Coal – Mineral Industries Holding Corporation Limited, Viet Nam did not reply to one of our questions. Therefore, we will state our question again:

- Office of the Government Announcement 346/TB-VPCP clearly states that two companies, including Vinacomin or TKV, are designated by the state as coal intermediaries:

[MOIT] shall direct Electricity Vietnam, PetroVietnam, and other enterprises with a need for imported coal to sign contracts with the TKV and Dong Bac General Corporations (the two enterprises designated as coal import intermediaries) to supply coal in accordance with the law and international customs; contracts should include a guarantee that contracts will be executed, to create conditions for these intermediaries to find a stable source of supply with appropriate quality and price.<sup>8</sup> (emphasis added)

Viet Nam asserts that this measure is "not a legal normative document to grant exclusive or special privileges to TKV to importing or exporting coal." Again, is Viet Nam representing that directives from the Deputy Prime Minister do not carry legal authority?

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<sup>5</sup> Government Decree 12/2014/ND-CP dated 25 February 2014 on the Charter for the Organization and Operations of the Northern Food Corporation; Government Decree 10/2014/ND-CP dated 13 February 2014 on the Charter on the Organization and Operations of the Southern Food Corporation.

<sup>6</sup> Office of the Government Announcement 5159/VPCP-KTN on Solutions to promote the purchase and consumption of the entire 2008 Summer-Autumn rice harvest in the Mekong Delta, dated 7 August 2008.

<sup>7</sup> The United States notes that Article 4.6 of the Law 80/2015/QH13 on the Promulgation of Legal Documents includes Prime Ministerial Decisions within Viet Nam's System of Legal Documents.

<sup>8</sup> Paragraph 3, Section 1, Office of the Government Announcement 346/TB-VPCP on the conclusions of Deputy Prime Minister Hoang Trung Hai at the meeting on the coal import situation, dated 26 August 2014.

**Follow-up Question 5**

In its reply to US Question 6 regarding Skypec, Viet Nam stated that, since 2016, "Skypec is no longer granted the monopolistic rights to import and export petroleum as fuel for civil aircrafts." With this reply, Viet Nam appears to be confirming that a special or exclusive privilege (i.e., monopolistic rights) did apply before then. Given this confirmation, will Viet Nam be providing a full notification for any of the earlier periods for which it has not fulfilled its notification obligation?

**Follow-up Question 6**

In its reply to US Question 4, Viet Nam did not reply to one of our questions. Therefore, we will state our question again:

- Please clarify the statement that a Prime Ministerial Decision is not a "legal normative document". Is Viet Nam asserting that decisions by the Prime Minister do not have legal authority?

**Follow-up Question 7**

In US Question 7 regarding General Aviation Import Export Joint Stock Company (Airimex), the United States referred to Viet Nam's revised notification that stated that Airimex "is the exclusive importer and distributor of spare parts of airplanes and most of [sic] other equipment in the aviation industry." In its reply, Viet Nam stated that, since 2006, "Airimex has not been granted any exclusive or special privileges by the Government in importing and exporting goods." Please confirm whether the earlier exclusive right referenced above continues to apply and, if not, what legal measure changed Airimex's status or otherwise authorized other enterprises to import these goods.

**Follow-up Question 8**

If, in its replies to these follow-up questions, Viet Nam determines that a new or revised notification is necessary, please advise as to when such notification will be provided.

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