

other measures the publication of which would impede law enforcement, Viet Nam would (a) publish in advance any regulations or other implementing measures of general application that it proposed to adopt and the purpose of the regulation or other implementing measure; (b) provide interested persons and other Members a reasonable opportunity to comment on such proposed regulation or other implementing measure; and (c) allow reasonable time between publication of the final regulation or other implementing measure and its effective date. The Working Party took note of these commitments.

## TRANSPARENCY

### Publication of information on trade

509. Some Members requested information on Viet Nam's implementation of the transparency requirements prescribed in Article X of the GATT 1994, Article III of the GATS and other provisions of the WTO Agreement. These Members asked whether a legal obligation existed in Viet Nam to publish in an official journal all laws, regulations, decrees, judicial decisions and administrative orders or rulings of general application or other measures having similar effect relating to trade or economic policy "in such a manner as to enable governments and traders to become acquainted with them". These Members further inquired as to what extent publication occurred prior to entry into force, and whether any such measures could enter into force without being published in the Official Gazette.

510. The representative of Viet Nam said that provisions on publication of legal acts and the opportunity for public comment had been included in the Law on the Enactment of Legal Normative Documents of 12 November 1996 together with its amendment approved by the National Assembly on 16 December 2002. Detailed rules and procedures had been established through Government Decree No. 161/2005/ND-CP of 27 December 2005 implementing the Law on the Enactment of Legal Normative Documents, Government Decree No. 104/2004/ND-CP on the Official Gazette, Circular No. 04/2005/TT-VPCP guiding the implementation of Decree No. 104/2004/ND-CP, and the Prime Minister's Directive No. 28/2001/CT-TTg of 28 November 2001 on the Continuous Improvement of the Business Environment.

511. The general procedures for soliciting public comment on draft legal instruments were laid down in Articles 40, 62, 65, 66 and 70 of the Law on the Enactment of Legal Normative Documents (as amended). In practice, the drafting entities circulated the draft legal instruments to organizations and individuals potentially affected by them or published the drafts in newspapers to elicit comments from the general public. Articles 62.2 and 65.4 of the amended Law on the Enactment of Legal Normative Documents required the Office of the Government to publish draft Government Resolutions and Decrees, and Decisions and Instructions of the Prime Minister, on the Internet or in mass media for comments by agencies, organizations and individuals. There was no specialized website for the publication of draft legal documents; draft legal documents were published on the website of the responsible Ministry and drafting agency, i.e., on the Ministry of Planning and Investment's website for documents related to investment ([www.mpi.gov.vn](http://www.mpi.gov.vn)), on the Ministry of Trade's website for documents concerning trade rules and regulations ([www.mot.gov.vn](http://www.mot.gov.vn)), and on the Ministry of Finance's website for documents on tax and finance ([www.mof.gov.vn](http://www.mof.gov.vn)). A number of draft documents were also published on the website of the Ministry of Justice ([www.moj.gov.vn](http://www.moj.gov.vn)). Drafting entities could also organize workshops and seminars to discuss the drafts with those interested. He noted that Directive No. 28/2001/CT-TTg required ministries and agencies to seek comments from the business community through the Viet Nam Chamber of Commerce and Industry in the drafting of any policies or rules affecting business operations. Draft legal documents affecting the business community were published on the Internet site of the Chamber of Commerce and Industry (<http://www.vibonline.com.vn>). He added that a draft Resolution or Decree would not be

published for comment if it related to national security, State secrets, or its nature or contents did not require such publication.

512. The obligation to seek the opinions of those directly affected by the legal documents, and the possibility to take account of these opinions in the drafting process, was laid down in Articles 3, 26.4 and 61.4 of the amended Law on the Enactment of Legal Normative Documents. Article 3.3 of the Law required the drafting agency to synthesize, analyze and evaluate the comments received and, as necessary, to propose adjustments to the original draft. The comments received by the drafting agency were attached to the draft legal instrument when forwarded to the appropriate decision-making body.

513. The Law did not specify how many times a draft legal instrument would be available for public comment. The drafts were normally available for comment only once, although specific cases could arise that would allow multiple opportunities for public comment. The Law did not stipulate any timeframe for the solicitation and provision of comments. Such issues were left to the discretion of the drafting entity, taking into account the complexity and importance of the proposed legal instrument. Asked about five-day or seven-day time limits specified in a new Law on the Promulgation of Legal Documents of People's Councils and People's Committees, he added that the limits stipulated in Articles 23, 30 and 41 of this Law were minimum, and not maximum, timeframes. The Law had been drafted to be fully consistent with WTO rules on transparency, and the implementing regulations for the Law would ensure uniform and consistent implementation of this Law throughout Viet Nam.

514. He confirmed that Article 47 of the Law on the Enactment of Legal Normative Documents authorized the Standing Committee of the National Assembly to invite relevant agencies or individuals to address the Committee on a draft ordinance. Although the Law did not provide similar authority to the National Assembly or to his Government, Article 32.2 allowed the lead examination committee of the National Assembly to conduct surveys and study "the reality of the issues belonging to the contents of the draft" and agencies, organizations and individuals contacted by the committee were required to provide information and materials to serve this examination.

515. As for the publication of legal instruments, the Law on the Enactment of Legal Normative Documents required that these documents be published in the Official Gazette or made known to the public through the mass media. As the effective dates of most legal documents were attributed to the time of publication in the Official Gazette as regulated by the Law, the Official Gazette was published almost daily. According to the amended Law, legal documents were required to be published in the Official Gazette and would only become effective 15 days thereafter, or at a later date if so specified. Pursuant to Article 8.1(b) of Decree No. 161/2005/ND-CP of 27 December 2005, legal normative documents issued by State bodies at the central level had to be sent to the Office of the Government no later than two working days from the date of promulgation or signing for publication in the Official Gazette. He added that legal documents were accessible on the Internet, for the time being in Vietnamese only. Legal normative documents issued by local authorities and provincial People's Councils were put up in notices on their premises. Asked whether laws, regulations or administrative orders could take effect prior to publication, the representative of Viet Nam said that according to the Law on the Enactment of Legal Normative Documents, Viet Nam's legislation applied retroactively only in extreme cases. The Law also stipulated non-retroactivity in case of (i) new legal obligations imposed on actions happening at a time when such legal obligations had not been provided by law; and (ii) new legal obligations which were higher than those applied at the time when such actions took place.

516. A Member noted that Vietnamese ministries appeared to use documents called "official letters" - not qualifying as legal normative documents in Viet Nam's legislation - to set policy, and that most ministries would deny requests to provide these documents. Viet Nam was requested to

update the Working Party on measures taken to bring this practice into conformity with WTO rules on transparency. This Member also sought confirmation that the Government of Viet Nam would no longer use "official letters" as policy-setting documents, and that the policies contained in existing "official letters" would be discontinued or, if adhered to by ministries, would be followed in a manner consistent with WTO rules on transparency.

517. In reply, the representative of Viet Nam said that "official letters" had not been recognized as legal normative documents under the Law on the Enactment of Legal Normative Documents or under the Law on the Promulgation of Legal Documents of People's Councils and People's Committees. Pursuant to Article 3 of Government Decree No. 161/2005/ND-CP of 27 December 2005, any document providing for legal normative rules, but not adopted in the form prescribed for legal normative documents, such as official letters, notices and guidelines, would be invalid and sanctions applied for its issuance in accordance with the law. The Government Office had issued Circular No. 04/2005/TT-VPCP and the Prime Minister has issued Directive No. 08/2005/CT TTg to ensure full implementation of the two Laws and to make the use of "official letters" more transparent and consistent with WTO rules. The Working Party took note of this commitment.

518. The representative of Viet Nam confirmed that from the date of accession his Government would fully implement Article X of the GATT 1994, Article III of the GATS and the other WTO transparency requirements, including those requiring notification, prior comment and publication. As such, all laws, regulations, decrees, judicial decisions and administrative rulings of general application pertaining to or affecting customs issues, trade in goods, services, intellectual property and the control of foreign exchange would be published promptly in a manner that fulfils the WTO requirements, and no such laws, regulations, decrees, judicial decisions and administrative rulings of general application would become effective or be enforced prior to such publication, except for those regulations, judicial decisions and administrative rulings of general application, and other measures involving national emergency or security, or for which publication would impede law enforcement. To this end, he further confirmed that Viet Nam would, as of the date of accession, establish or designate an official journal or website for each of the topics (or an aspect of a topic) identified above, dedicated to the publication, prior to their entry into force, of all regulations, decisions, orders, and administrative rulings of general application, pertaining to or affecting that topic. Such journals or websites would be updated on a regular basis, notified to the WTO, and readily available to WTO Members, individuals, associations and enterprises. The websites or journals where these measures would be published are listed in Table 23. The publication of such regulations and other measures would include, as appropriate, the following: (i) the names of the authorities (including contact points) responsible for implementing a particular measure; and (ii) the effective date of the measure. The representative of Viet Nam confirmed that with respect to proposed laws, ordinances, decrees and other regulations and measures issued by the National Assembly and the Government pertaining to or affecting trade in goods, services, and intellectual property, Viet Nam would provide a reasonable period, i.e., no less than 60 days, for Members, individuals, associations and enterprises to provide comments to the appropriate authorities before such measures are adopted. The Government would take into account any comments received during the period for commenting. The only exceptions to this opportunity for comment would be for those regulations and other measures involving national emergency or security, or for which publication would impede law enforcement. The Working Party took note of these commitments.

### **Notifications**

519. The representative of Viet Nam said that at the latest upon accession, Viet Nam would submit all initial notifications required by the WTO Agreement. Any laws, regulations, or other measures subsequently enacted by Viet Nam, and which were required to be notified pursuant to the WTO Agreement, would also be notified in a time and manner consistent with WTO requirements. The Working Party took note of these commitments.