

QUESTIONNAIRE ON A 'FREE TRADE AGREEMENT' WITH VIETNAM

On 31st May 2012 the European Commission received the endorsement from the Council to open negotiations for a Free Trade Agreement (FTA) with Vietnam.

Background

In 1995 Vietnam joined the ASEAN and begun its accession to the World Trade Organization, which was completed in 2007. At the same time, in 1995, Vietnam signed a cooperation agreement with the European Community, which unilaterally granted to Vietnam the MFN treatment. In recent years, within the ASEAN, Vietnam became party to five FTAs: ASEAN – China, ASEAN – India, ASEAN – Korea, ASEAN – Japan and ASEAN – Australia – New Zealand and has bilateral FTAs with Japan and Israel. Vietnam is also negotiating within the Trans Pacific Partnership.

Vietnam is the EU's fifth individual trade partner in ASEAN, with bilateral trade in goods reaching €18 billion in 2011. The EU exported goods worth €5.2 billion and imported goods worth €12.8 billion. From 2007 to 2011, EU export grew by 9.8% on average per year.

Information on the questionnaire

The questionnaire is divided into the following sections:

- I. Trade in Goods
- II. Trade in Services and Investment
- III. Regulatory Issues (Intellectual Property Rights, Competition, Government Procurement)
- IV. Other issues

Should there be any additional point you wish to draw the Commission's attention to, please describe this under chapter "IV. Other issues".

In addition, where possible, we would appreciate receiving as specific information as possible (substantiated where possible by economic indicators and/or data) of respondents' interests, prioritization within sectors, and any proposals for solution, where problems have been identified.

The questionnaire has been prepared in order to provide the Commission with information to assist it in establishing priorities and taking decisions throughout the negotiating process. Your reply to this questionnaire is important in this process and we thank you in advance for your contribution.

The Commission, subject to the application of the EU's rules on access to documents (Regulation No 1049/2001), will treat the information that you provide as confidential. EU rules on access to documents allow the Commission to withhold access to a document where disclosure would undermine the commercial interests of a natural or legal person or harm the EU's relations with third countries, unless there is an overriding public interest in disclosure.

Please send your replies by 17 August 2012 to the following e-mail address: trade-industry@ec.europa.eu

I. TRADE IN GOODS

The Trade in Goods section of this questionnaire is divided into the following sections:

- A. General goods-related questions
- B. Questions related to rules of origin
- C. Questions related to import restrictions and prohibitions
- D. Questions related to access to raw materials and export restrictions and prohibitions
- E. Questions related to import and export procedures (included under a general heading "customs procedures")
- F. Questions related to discrimination and transparency in domestic regulation and taxation
- G. Questions on trade defence instruments (anti-dumping, anti-subsidy and safeguards)
- H. Questions related to Technical Barriers to Trade (TBT) (industrial goods)
- I. Questions related to Sanitary and Phytosanitary Measures (SPS) (agricultural goods, fish and fishery products)

A. General goods related questions

1. What are the existing trade flows in your sector(s)?
2. What is your assessment of the potential for growth in this sector(s)?
3. Could you specify your overall "offensive" and "defensive" interests?

(Note: "Offensive interest" is understood to mean the interest you may have in gaining access to the Vietnamese market. "Defensive interest" is understood to mean competition from Vietnamese firms in your domestic market.)

4. In your sector, do you see either:
 - a) an interest in EU companies supplying goods to Vietnam (i.e., an export interest)?
 - b) an interest in importing?
 - c) an interest in EU companies setting up production facilities in Vietnam?

How strongly (for example, in financial terms) would you rate the level of these interests?

5. Is there any element in an FTA between Vietnam (or ASEAN) and a third country that harms your competitive position?
6. How would you assess for your sector the relative importance of Vietnam (in terms of production capacity, comparative advantage, potential etc.) among the countries of the South-East Asian region?

B. Questions related to rules of origin

7. What preferential rules of origin should apply in the sector(s) of your interest in any agreement with Vietnam, standard or new rules based on the reform of GSP? (if relevant, please indicate the maximum level of non-originating materials that you could accept – or prefer).
8. Would your industry need specific flexibility to source abroad, including from other ASEAN Member States? If yes, from which ASEAN country? Could your industry indicate sensitivities as regards possible cumulation by Vietnam of materials or products from other ASEAN countries?

C. Questions related to import restrictions and prohibitions

9. Does your sector face import restrictions or prohibitions in Vietnam? If so, please specify the type of import restrictions (tariff rate quota, import licensing, import prohibition etc.) Please specify the likely effect of their elimination.
10. If your product is subject to import licensing requirements, are such licenses granted automatically to all applicants?
11. Are all measures related to import restrictions or prohibitions publicly available?

D. Questions related to access to raw materials and export restrictions and prohibitions

12. Does your sector have an interest in purchasing raw materials from Vietnam? If so, please specify what raw material and describe its economic relevance. Are there any measures that could be included in an agreement to facilitate trade or reduce costs for trade in raw materials?
13. Does your sector face export restrictions or investment restrictions with respect to Vietnam? If so, please specify the type of export restrictions (export duty; tariff rate quota, VAT rebate schemes; licensing; discriminatory promotion schemes)? Please specify the likely effect of their elimination.
14. Are you aware of dual pricing of raw materials, i.e. where raw materials are priced at a lower level on the domestic market compared to international market prices to the benefit of local production?
15. On top of legally binding provisions in an eventual EU-Vietnam agreement, does your sector favour closer cooperation in the field of raw materials with Vietnam? If so, in which form (e.g. regular dialogue)? What could be the topics discussed in the framework of such a cooperation (e.g. rules, points of concern, alliance building with raw material producers and potential users)?
16. Do any environmental issues arise?
17. Does your sector have an interest in investing into the Raw Materials sector in Vietnam? Which are the specific issues which should be tackled to facilitate this? Please explain.

E. Customs Procedures (import, export and transit procedures)

18. Do you face problems regarding one or several of the following issues? Please respond with yes/no and where possible provide a more detailed description of the problems faced.

a) Overall problems with procedures and requirements for imports, exports and/or transit in Vietnam?

b) Do you encounter specific problems related to:

- | | |
|--|--------|
| - inspections and controls during clearance | YES/NO |
| - fees and charges | YES/NO |
| - confidentiality of data | YES/NO |
| - data requirements | YES/NO |
| - documentation requirements | YES/NO |
| - other customs procedures | YES/NO |
| - transparency / publication of and access to trade regulations | YES/NO |
| - discriminatory treatment | YES/NO |
| - lack of uniformity in application of procedures | YES/NO |
| - customs valuation | YES/NO |
| - co-ordination between different border agencies | YES/NO |
| - use or non-use of information technology | YES/NO |
| - application or non-application of relevant international standards | YES/NO |
| - procedures for legal recourse/appeal | YES/NO |
| - transshipment | YES/NO |
| - other (please specify) | YES/NO |

c) In light of your sourcing / delivery patterns, do you have any other comments to make?

F. Questions related to discrimination and transparency in domestic regulation and taxation

19. Is your sector faced with discriminatory measures and practices between domestically produced goods and imported goods into Vietnam? If so, describe the nature of this discrimination (e.g. is it based on legislation or on de facto discrimination? Does it concern a regular domestic regulation and/or taxation regime?) Can you provide written substantiation of discrimination (including reference to legislation)?

20. Do you encounter problems due to lack of transparency of Vietnamese regulation, e.g. in the form of lack of publication of legislation or other documents? (Please also refer to the detailed questions under section III.A) below regarding transparency).

G. Questions on trade defence instruments (anti-dumping, anti-subsidy and safeguards)

21. Have you had experience related to the use of trade defence instruments in Vietnam (anti-dumping, anti-subsidy or safeguards)?

22. Were there particular difficulties in communicating with and/or receiving information from the Vietnam authorities dealing with trade defence instruments?
23. Have you encountered market distortions (subsidies, pricing policies) in Vietnam which should be addressed by e.g. trade defence measures or other types of measures or which create structural trade difficulties?

H. Technical Barriers to Trade

In the context of this questionnaire, the term "Technical Barriers to Trade (TBT)" is intended to mean requirements applicable to products (e.g. technical regulations) and the conformity assessment procedures intended to verify compliance with these requirements (e.g. testing, inspection and certification, product registration or licensing, etc.).

Please provide comments on the following issues. Comments are particularly welcome if you or your colleagues in the industry consider that some of the below areas should take priority in the TBT discussions.

24. Have you found product requirements to be a problem in exporting your products to Vietnam?
25. Often, trade barriers arise not necessarily from the product requirements as such, but the procedures used to verify compliance with these requirements (conformity assessment procedures). What are the procedures used by Vietnam to verify compliance of products in your sector? Are they more burdensome than those applied in the EU?¹ Do you encounter difficulties (e.g. increased costs and marketing delays) due to these conformity assessment procedures?
26. What is your assessment of Vietnam's transparency and good regulatory practice in the development, adoption and enforcement of technical regulations? Please focus in particular on the questions below, and provide as detailed answers as possible.
 - (a) How do Vietnamese authorities consult industry on proposed standards or technical regulations? For instance, does Vietnam systematically conduct public consultations on draft standards or technical regulations, to which industry can submit comments?
 - (b) If not, do importers (or domestic industry in Vietnam) have other opportunities to submit comments during the drafting of new technical regulations, before the proposal is adopted?
 - (c) Are similar consultation opportunities being provided to both domestic and foreign industry?
 - (d) In your experience, have comments made by stakeholders been taken into account?

¹ For instance, EU legislation may allow the manufacturer to self-certify the products without the intervention of a third party certification body, whereas Vietnam may require that the product be certified by a public authority or a certification body approved by this authority.

(e) Is industry involved in standardization work in Vietnam? In particular, are foreign and / or foreign-invested companies allowed to participate in standard-setting activities in your sector? (e.g. membership in technical committees developing new Vietnamese standards) If yes, what is your experience with regard to this area.

(f) Have you ever tried to obtain information about proposed or adopted technical regulations, conformity assessment procedures or standards from the Vietnamese TBT Notification and Enquiry Point (www.tbvtvn.org)? Have you encountered specific difficulties?

27. Have you experienced problems or difficulties arising from the division of responsibility for TBT-related measures between Vietnamese authorities, or from regulatory differences between different regions of Vietnam?

28. Do any or all of the following issues pose particular problems with regard to exporting your products to Vietnam?

(i) short implementation periods for new measures;

(ii) availability of technical regulations (e.g. official Journal, public website etc.)

29. Does Vietnam use relevant international standards as a basis for the national standards and technical regulations in your sector? If so, are there any unnecessary deviations from, or additions to those international standards, that could create barriers to trade?

30. Do you encounter any barriers to trade arising from burdensome or discriminatory labelling or marking requirements? If so, please describe them in as much detail as possible.

31. With your knowledge of the technical regulations, standards and conformity assessment systems both in the EU and Vietnam, do you have any recommendations for solutions which would facilitate trade?

32. Would your proposed solutions be achievable within the provisions of regulatory systems currently applied in the EU and Vietnam, or would changes to the systems or legislative framework be necessary?

I. Sanitary and Phytosanitary Measures (Agricultural products, fish and fishery products)

Sanitary and Phytosanitary Measures apply in order to protect human, animal, and plant health.

Your answers to specific product questions (33) to (39) will be taken as an indication of interest that might change over time.

33. List the agricultural products (these include animals and animal products, plants and plant products and fishery products) you are currently exporting to Vietnam / importing from Vietnam.

34. List the agricultural products that you may be potentially interested to export / import in future to Vietnam (regardless of whether exports are currently taking place or have taken place in the past).

35. Please specify the major Sanitary and Phytosanitary (SPS) barriers you have encountered in the past (or may potentially encounter) when trying to export agricultural products into Vietnam.
36. With your knowledge of the technical regulations, standards and conformity assessment systems both in the EU and Vietnam; do you have any recommendations for solutions which would facilitate trade?
37. Would your proposed solutions be achievable within the provisions of regulatory systems currently applied in the EU and Vietnam, or would changes to the systems or legislative framework be necessary?
38. Do you expect that an SPS chapter in the proposed future agreement will benefit your industry? If so, please clarify.
39. On the basis of your previous response, which basic elements/provisions should an SPS chapter with Vietnam contain in order to potentially fulfil your priorities?
- (i) Transparency (better notification provisions on SPS import rules including predictability and stability of SPS rules)
 - (ii) Regionalisation for animal and plant diseases
 - (iii) Equivalence (system of recognition)
 - (iv) Pre-listing of exporting establishments
 - (v) Certification procedures
 - (vi) Verification procedures
 - (vii) Information exchange
 - (viii) Notification and consultation
 - (ix) Safeguard measures
 - (x) Labelling
 - (xi) Other

II. TRADE IN SERVICES AND INVESTMENT

40. What are the main barriers that your sector encounters in cross-border services trade with Vietnam (ex. obligation to have a local commercial presence, etc.)?
41. What are the main barriers that your sector encounters in establishing a commercial presence in the primary, secondary or tertiary sector in Vietnam (ex. capital ownership / equity cap, difficulty in obtaining a licence or authorisation, complex and lengthy procedure between federal and provincial level, etc.)?
42. What are the main barriers that your sector encounters with regard to the temporary movement of natural persons for business purposes in the primary, secondary or tertiary sector in Vietnam (ex. difficulty in obtaining work permits and visas due to lengthy procedures, lack of transparency in regulations at various administrative levels, etc.)?

43. Do you observe any self-imposed constraints (i.e. voluntary codes of conduct that are agreed and followed by operators) relating to environmental and social aspects of sustainable development, in the context of investment or services trade, which it would be to your advantage to see generalised or codified in Vietnam? And if so, which?
44. Do you encounter problems due to lack of transparency e.g. lack of publication of legislation or other documents relevant for your trade behaviour? Please also refer to the detailed questions under section III.A) below regarding transparency.
45. Is there an interest in having a Mutual Recognition Agreement in your sector (to cover recognition of standards, licenses, qualifications or else)?
46. Is market access allowed in your sector in Vietnam which goes beyond its relevant access obligations in the WTO and if yes, is it still interesting for your business to obtain further formal market access commitments?
47. In the sector in which your business specialises, do you have a particular interest in entering in the market of Vietnam?
48. What are the areas/sectors in which European companies are at a disadvantage in vis-à-vis third countries' competitors, due to FTA agreements already in force or about to come into force (e.g. list of Vietnam-third country FTAs)?
49. In the light of question 48, what negotiating objectives should the EU focus on, in the various sectors, so as to achieve at least a level playing field for its service providers in Vietnam?
50. Are foreign investments in Vietnam treated in a fair and equitable manner? Have there been any unreasonable, arbitrary or discriminatory measures against foreign investments?
51. Have there been any cases of direct or indirect expropriation? If so, have expropriated investments been compensated promptly, adequately and effectively?
52. Are the provisions on free transfer of funds of capital and payments related to an investment by investors fully respected?
53. Have there been any restrictions on payments due to exceptional circumstances such as pressures on the balance of payments or exchange rate policy?

III. REGULATORY ISSUES

A. Transparency

To the extent applicable, indicate what problems arise due to lack of transparency such as lack of publication of legislation or other relevant documents. In the questions below, administration/government should be understood as local authorities, for instance regulatory bodies, regulatory authorities, certification offices, licencing authorities.

54. Is information on trade-related regulations and their administration published and readily available, including on laws and regulations, procedures, penalties, appeal procedures, administrative guidelines and practice, decisions, and agreements with Vietnam where relevant.

55. Is information made available in a readily accessible way, including through websites?
56. Are there enquiry points available and accessible to interested parties (including through web-sites) which help making information on trade-related regulations and their administration available?
57. Other requirements, suggestions concerning the availability of information?
58. Are the intervals between publication and entry into force sufficient to allow interested parties to become acquainted with and well prepared for complying with them?
59. Are appropriate opportunities offered for prior consultation and commenting on new and amended rules?
60. Are there effective consultation mechanisms between interested parties and government?
61. Are there any areas or sectors where consultation could be improved?
62. Do the consultation mechanisms include timing considerations or deadlines that allow for efficient and transparent procedure?
63. Are advance rulings available from the administration (such as for trade in goods on customs classification and origin)?
64. Are there adequate complaints possibilities and appeal procedures?
65. Are the appeal procedures adequate in terms of non-discrimination, transparency, possibility for representation by independent legal counsel, cost and timelines?
66. Do you have any other comments on the administration of trade-related regulations, including on the use of discretion, system of penalties, coordination and control mechanisms?
67. Please specify any shortcomings identified. Where available, identify best practices (such as existing information and transparency mechanisms in Vietnam) that could serve as a reference or starting point.

B. Intellectual Property Rights

68. Are you satisfied with the current conditions of protection and enforcement of intellectual property rights (IPR) in Vietnam? Please explain briefly nature/scope of the problem, if any?
69. According to your experience, what are the main weaknesses / problems of the current system in place (if any)?
70. Is an adequate and effective protection and enforcement of IPR in the country essential for the pursuit of your trading activities there?
71. Please indicate whether you consider intellectual property rights issues as priorities and specify which IPRs are the top priorities for you in Vietnam and why :

(i) Copyright and related rights

- (ii) Trademarks
- (iii) Geographical Indications (GIs)
- (iv) Designs
- (v) Patents
- (vi) Data protection
- (vii) Plant variety
- (viii) Enforcement

72. Please indicate one particular aspect of intellectual property protection or enforcement that you would wish to see addressed in a trade agreement.

73. Have you encountered problems in protecting/enforcing your IPRs in Vietnam? If yes, how did the protection/enforcement mechanisms function in this country? Did you encounter difficulties in protecting/enforcing your rights being a foreigner in Vietnam?

74. Is there any type of enforcement measure missing in Vietnam's legislation and practices that you consider necessary in order to react against infringements of IP rights?

C. Competition, State Aid/Subsidies and State-Owned Enterprises

75. Have you encountered any anti-competitive practices in Vietnam (cartels, abuse of dominant position, vertical or horizontal restrictions of competition, anti-competitive mergers & acquisitions) that are harming your business? If so, describe briefly the nature of the practices and the problems encountered.

76. Have you brought these problems to the attention of the relevant competition authority? If so, what has been their response/follow-up and how have decisions been enforced?

77. Have you been subject to investigations for alleged competition infringements by the Vietnamese competition authorities? If yes, how was this experience?

78. Have you been party to any merger review filings in Vietnam? If yes, how was this experience?

79. Are you aware of instances where state aid/subsidy granted by Vietnam authorities has had adverse effects on you?

80. Has Vietnamese state aid/ subsidy put you or a company you know of at a competitive disadvantage? If so, please

- a) Indicate whether the aid made it more difficult for you to compete in the Vietnamese market, in the EU market and/or in export markets
- b) Describe to the extent possible the form of the state aids/subsidies involved (e.g. export rebates, tax/duty exemptions, below-market loans, state guarantees, grants), the objective (e.g. Research and development aid, export aid, regional development aid), the sectors concerned, the granting authority (e.g. federal or provincial government, specific agency) and give an estimate of their amount.
- c) Indicate if you have taken any steps to raise this matter, either in Vietnam or with the appropriate authorities in the EU? Have you had problems in getting information on the state aid/subsidy granted by the Vietnamese authorities?

81. Have you invested in Vietnam? Has the availability of state aids/subsidies played a role in your decision? If yes, please describe the form, amounts and objective of the aid in question and specify the granting authority. Have you experienced discrimination in the access to state aid/subsidies from Vietnamese authorities (e.g. aid or higher amounts of aid reserved to local firms)?
82. Are you aware of the Vietnamese government granting special or exclusive rights or privileges, advantages or immunities to domestic state-owned enterprises that have an adverse effect on your business (e.g. discriminatory treatment, state aid/subsidies, access to markets, access to public procurement, access to financing)? If so, describe briefly the nature of these practices and the problems encountered.
83. Are you aware of any exemptions from the national law granted to Vietnamese state-owned enterprises or the existence of statutory laws or favourable regulatory or other measures applicable to state-owned enterprises? If yes, please provide a brief description.
84. Are you aware of any particular government measures that would induce or encourage Vietnamese state-owned companies to engage in anti-competitive behaviour? Please describe such measures.
85. Are you aware of any national policy objectives that the Vietnamese government is implementing through domestic state-owned enterprises and which have an adverse effect on your business? If yes, please describe briefly what such policy objectives are and how they affect your business.
86. How easy/difficult is it to get information about the activities on Vietnamese state-owned companies (though annual reports, published accounts etc)? If there are problems, how would you suggest to improve the situation?

D. Government procurement

Please respond with yes/no and where possible provide comments to expand on the replies to the following issues.

87. Are you satisfied with the current conditions of access to Vietnamese government procurement markets?
88. Are you aware of existing legislation on government procurement in Vietnam? Which are your experiences with its practical application?
89. Are there any areas in which you feel EU suppliers face restrictions or different treatments that do not apply to Vietnamese suppliers? Please indicate the key regulatory and market access obstacles met by EU suppliers when tendering for public contracts. Please specify the extent to which these obstacles prevent EU suppliers from doing business in Vietnam
90. Please indicate whether you consider the following possible elements of a government procurement chapter as a priority concerning procedural rules and national treatment :
- (i) Transparency in the tendering process
 - (ii) Easy access to the qualification system
 - (iii) Use of international rather than local technical standards

- (iv) Effective review mechanisms including the possibility to obtain interim measures
- (v) A single point of entry giving an overview of, and access to, all relevant procurement opportunities in a given jurisdiction
- (vi) National and MFN treatment

91. Please indicate which key sectors, types of contract (public contracts, concessions, and other forms of Public Private Partnership) and procuring entities are priorities for EU suppliers. As regard services, mention precisely the category of services as well as the mode of supply (cross-border supply / consumption abroad / commercial presence/ presence of third country natural persons) in which EU providers are interested in.

92. Please indicate the key regulatory and market access obstacles faced by EU suppliers when tendering for public contracts. Please specify the extent to which these obstacles prevent EU suppliers from doing business in Vietnam.

IV. OTHER ISSUES

93. Are there any other issues related to the topics covered by the above sections or to any other topics that are not mentioned in this questionnaire and that you would like to address?