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Export controls in Vietnam



With fuller integration into the world economy high on its priority list, the Vietnam government has put bringing the country's under-developed export controls system in line with international standards very much on the agenda, writes Thomas J. Treutler.

With the continued increase in foreign trade and integration into the world economy, especially since its accession to the World Trade Organization in 2006, Vietnam has taken several legislative steps to introduce export controls into its legal regime. This article provides an overview of the current status of Vietnam's regulations on export control.

Controls on telecoms equipment

Vietnam's government and the Ministry of Information and Communications ('MIC') have issued various regulations prohibiting or placing special conditions on the import, export, and trading in various types of telecommunications equipment. In particular, lists of prohibited products, restricted products, and products subject to special conditions have been issued. Special permits are required to import or export products subject to special conditions. For example, under Decree No. 59/2006/ND-CP, very general product categories are listed as subject to special conditions, including telecommunications equipment and wireless broadcasting and receiving equipment. This is one area where Vietnam's export control laws can have a very broad reach.

Further stringent controls prohibiting imports of certain second-hand informatics equipment are set out in Decision No. 20/2006-QD-BBCVT, issued by the Minister of Posts and Telecommunications on 30 June 2006 ('Decision No. 20'). In general, almost all types of used computers, printers, hard drives, radio equipment, and various other types of equipment are prohibited for import. Second-hand goods is one area where Vietnam strictly enforces its import regulations. In one case in 2007, citing the provisions of Decision No. 20, Vietnamese customs authorities seized thousands of second-hand digital

monitors that were imported into Vietnam and imposed a US\$900 fine. In general, second-hand goods may only be allowed into Vietnam with approval from the Prime Minister or with that of certain authorities in charge of the charitable sector.

Controls on encrypted products

As in China, Vietnam's regulations on controls of encrypted technology focus on controlling the use of encryption within the country. Vietnam's encryption regulations are set forth in Decree No. 73/2007/ND-CP ('Decree No. 73'), which was promulgated by the government on 8 May 2007. Decree No. 73 contains regulations on research activities, trading, production and the import/export of encryption and encrypted products. The highest authority in charge of encryption is the Encryption Committee of the government. Any entity that intends to trade in or produce encryption or encrypted products must have a permit from the Encryption Committee. An implementing circular for Decree No. 73 has also been issued by the Ministry of Home Affairs.

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Under Decree No. 73, encrypted products fall under the published list of products and goods of which export and import is subject to special conditions. This means that a permit is required prior to import or export such goods. This is a very broad provision, and no further guidelines have been issued. Thus the regulations could conceivably be interpreted as casting a very wide net that could bring

encryption technologies in most laptops or smart phones under the export controls on encryption. The broad reach of these export controls is further extended owing to the very broad definition of encrypted products, which basically includes any materials, technical equipment or computer software coded to protect information. Services in providing encryption are also controlled in Vietnam.

To date, however, there has been no known enforcement of these provisions in Vietnam, although the laws are on the books. In fact, a major computer industry publication in Vietnam recently published an article noting that very few of the companies or products in this area in Vietnam are operating with proper permits. Against this backdrop, a government officer in charge of this area stated that more needs to be done to educate business of the legal requirements and dangers that could arise if encryption is not managed.

Military equipment subject to export/import controls

In Vietnam, the military authorities have also issued regulations prohibiting the import and export of certain items. These regulations were set forth under Decision No. 80/2006/QD-BQP ('Decision No. 80'), issued by the Vietnamese Ministry of Defense on 9 May 2006. Items in the List of Weapons, Ammunition, Explosives and Military Technical Equipment Banned from Import and Export issued under Decision No. 80 may only be imported or exported pursuant to an approval from the Prime Minister, and a permit issued by the Minister of Defense. Items banned for import and export include:

- Explosives (other than industrial explosives), including propellant powders, prepared explosives and various detonation devices such as fuses;

- Tanks and other armoured fighting vehicles;
- Aircraft with combat equipment or weapons;
- Warships;
- Other military weapons;
- Revolvers and pistols;
- Weapon parts;
- Bombs, grenades, etc.; and
- Military equipment in general, including military uniforms.

The regulations do not specify whether permits are needed for each shipment, or can be used for multiple shipments of banned items.

The provisions on the prohibition on importing aircraft set forth under Decision No. 80 were recently raised as an issue by the General Department of Customs who sought clarification as to which authorities should issue permission to import certain types of airplanes – the Ministry of Defense, or the Ministry of Transport, which also has apparent authority over airplanes.

Agricultural imports/exports

Controlled agricultural items fall under the authority of Vietnam's Ministry of Agriculture and Rural Development ('MARD'). Vietnam is known to have strict controls of agricultural imports in order to protect the country's key agricultural sector. Vietnam is one of the world's largest producers of rice and coffee and 80% of the population still work primarily in agriculture.

Vietnam has also acceded to conventions on non-proliferation of weapons of mass destruction.

With its vast coastline, the country is also one of the world's major exporters of fish products. To this end, MARD has issued Circular No. 60/2009/TT-BNNPTNT, which provides guidelines on export and import controls for the domains of agriculture, forestry and fisheries.

Timber products

Vietnam has a general ban on exports

of timber products that is strictly enforced in practice. Notably, Circular No. 60 specifically prohibits exports of timber products specified in appendix I of the Convention on International Trade of Endangered Species of Wild Fauna and Flora ('CITES'). A CITES permit issued by the CITES Management Authority of Vietnam is required for any exports of timber falling under appendix II of CITES.

A few exceptions and permit application processes are set out in Circular No. 60. Exceptions are set forth for certain finished woodworks that are completely assembled or knocked-down versions of finished products that can be used immediately following assembly.

Rare and wild animals and plants

Commercial exports of endangered, precious and rare wild animals and plants from natural forest is banned, including all wild plants and animals specified in appendix I of CITES or specified under certain groups set out in Decree No. 32/2006/ND-CP of the government of Vietnam, dated 30 March 2006. Various exemptions exist for non-commercial exports for research or performance purposes. Imports of wild animals and plants specified in CITES appendices are only allowed pursuant to a permit issued by the CITES Management Authority of Vietnam.

Plant varieties

MARD periodically issues a list of plant varieties banned for export or import. Plant varieties that do not appear on this list may be imported for purposes of research and trials, pursuant to a permit obtained from MARD's cultivation department (for agricultural plant varieties) or MARD's forestry department (for forest plant varieties). Based on the results of trials, MARD may recognize new plant varieties and add them to a list of plant varieties permitted for production and trading that is also periodically issued. Items on this latter list may be imported without permits.

Other provisions of Circular No. 60 deal with imports and exports of livestock breeds, veterinary drugs and

International cooperation

As Vietnam integrates into the world economy, its governmental authorities are taking steps to bring the country's undeveloped export controls system in line with international standards. In this regard, Vietnam's authorities regularly participate in export controls seminars organized through organizations such as APEC, of which it is a member, in order to take steps toward implementing APEC commitments on export control, such as the APEC Key Elements for Effective Export Control Systems, which were adopted by the APEC ministers in 2004.

Vietnam has also acceded to conventions on non-proliferation of weapons of mass destruction. Recent years have seen numerous programmes implemented in Vietnam to help modernize its customs agencies and to train Vietnamese customs authorities in best practices. This has led to increased seizures of illegal cross-border goods (such as counterfeit goods and contraband).

biologicals for veterinary use, plant protection products (pesticides, etc.), fertilizer, livestock feed, aquatic feeds, and aquatic species and breeds, as well as aquatic biologicals.

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