STANDING COMMITTEE
NATIONAL ASSEMBLY

SOCIALIST REPUBLIC OF VIETNAM
Independence - Freedom - Happiness

No. 41-2002-PL-UBTVQH10

ORDINANCE
ON
MOST FAVOURED NATION TREATMENT AND NATIONAL TREATMENT IN INTERNATIONAL COMMERCE

In order to unify State administration of most favoured nation treatment and national treatment on the basis of equality and mutual benefit in international commerce; to implement effectively external economic policy and enhance the economic co-operative relationship between the Socialist Republic of Vietnam and other countries;

Pursuant to the 1992 Constitution of the Socialist Republic of Vietnam as amended by Resolution 51-2001-QH10 of Legislature X of the National Assembly at its 10th session on 25 December 2001;

Pursuant to the Resolution of Legislature X of the National Assembly at its 10th session on the program for formulation of laws and ordinances in 2002;

This Ordinance provides for the application of most favoured nation treatment and national treatment in international commerce.

CHAPTER I

General Provisions

Article 1 *Governing scope*

This Ordinance regulates the scope of, principles for, and the cases for applicability of most favoured nation treatment and national treatment in international commerce, comprising the sectors of trade in goods, trade in services, investment, and intellectual property rights.

Article 2 *Applicability*

Most favoured nation treatment and national treatment shall apply to the following:

1. Goods imported into Vietnam and goods exported from Vietnam;
2. Foreign services and foreign service providers;
3. Foreign investment and foreign investors;
4. Holders of intellectual property rights being foreign organizations and individuals.

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Article 3 *Interpretation of terms*

In this Ordinance, the following terms shall be interpreted as follows:

1. *Most favoured nation treatment in commercial goods* means treatment of imported goods originating from any one country which is no less favourable than the treatment Vietnam accords to similar imported goods originating from third countries, or to goods exported to any one country in comparison to similar goods exported to third countries.

2. *Most favoured nation treatment in commercial services* means treatment of services and service providers of any one country which is no less favourable than the treatment Vietnam accords to the equivalent services and service providers of third countries.

3. *Most favoured nation treatment in investment* means treatment of investment and investors of any one country which is no less favourable than the treatment Vietnam accords to investment and investors of third countries in similar conditions.

4. *Most favoured nation treatment in intellectual property rights* means treatment with respect to establishing, protecting and enforcing intellectual property rights and the benefits from such rights of organizations and individuals of any one country which is no less favourable than the treatment Vietnam accords to organizations and individuals of third countries.

5. *National treatment in commercial goods* means treatment of imported goods which is no less favourable than the treatment Vietnam accords to similar domestic goods.

6. *National treatment in commercial services* means treatment of foreign services and service providers which is no less favourable than the treatment Vietnam accords to similar domestic services and service providers.

7. *National treatment in investment* means treatment of foreign investment and foreign investors which is no less favourable than the treatment Vietnam accords to domestic investment and domestic investors in similar conditions.

8. *National treatment in intellectual property rights* means treatment with respect to the creation, protection and enforcement of intellectual property rights and the benefits from such rights of foreign organizations and individuals which is no less favourable than the treatment Vietnam accords to domestic organizations and individuals.

Article 4 *Principles applicable to most favoured nation treatment and national treatment*

The State of Vietnam shall apply most favoured nation treatment and national treatment in international commerce on the basis of equality, reciprocity and mutual benefit.

Article 5 *General exceptions*

1. Most favoured nation ["MFN"[1]] treatment and national treatment ["NT"[2]] shall not apply in cases where it is necessary to protect national defence interests and national security; to preserve national cultural values and the national spirit; to protect people's health; to protect plants, animals and the environment; and to prevent acts of commercial fraud.

2. MFN treatment and NT shall not be applied to countries which are engaged in or which participate in activities opposing the independence, sovereignty, unification and territorial integrity of the Socialist Republic of Vietnam.

[1] Inserted by Phillips Fox.
[2] Inserted by Phillips Fox.

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CHAPTER II

Most Favoured Nation Treatment

Article 6 *Cases in which MFN treatment shall apply*

The State of Vietnam shall apply a part or all of MFN treatment in the following cases:

1. Where the laws of Vietnam provide for the applicability of MFN treatment.
2. Where an international treaty which Vietnam has signed or to which Vietnam has acceded provides for the applicability of MFN treatment.
3. Where a nation or territory has in fact already applied MFN treatment to Vietnam.
4. In other circumstances as decided by the Government.

Article 7 *Scope of applicability of MFN treatment to commercial goods*

MFN treatment to commercial goods shall apply to:

1. Taxes, all types of charges and other fees applicable to import and export goods or relating to import and export goods.
2. Payment methods and remittance of payments for import and export goods.
3. Provisions and procedures relating to import and export of goods.
4. Taxes and all types of charges collected directly or indirectly in Vietnam on import goods.
5. Quantitative restrictions and issuance of permits to import or to export goods.
6. Other provisions of law which impact on the sale, offer, purchase, transport, distribution, warehousing and use of goods on the domestic market.

Article 8 *Exceptions on MFN treatment to commercial goods*

MFN treatment to commercial goods shall not apply to the following:

1. Preferences granted to members of agreements on economic integration which Vietnam has signed or to which Vietnam has acceded.
2. Preferences granted to countries which have common borders with Vietnam aimed at facilitating the circulation of border goods on the basis of bilateral agreements.
3. Preferences granted to developing countries and to underdeveloped countries.
4. Preferences pursuant to agreements on goods in transit which Vietnam has signed or to which Vietnam has acceded.
5. Tenders for procurement of goods for projects using aid funded by international organizations or foreign aid and other projects pursuant to regulations of the Government.

Article 9 *Scope of applicability of MFN treatment to commercial services*

MFN treatment to commercial services shall apply to measures for adjusting commercial services activities in which foreign service providers engage within the territory of Vietnam.

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Article 10 *Exceptions on MFN treatment to commercial services*

MFN treatment to commercial goods shall not apply to the following:

1. Exceptions to MFN treatment applicable to service industries provided for in bilateral or multilateral agreements which Vietnam has signed or to which Vietnam has acceded.
2. Preferences granted to services and service providers of countries which have common borders aimed at promoting commercial services activities between Vietnam and those countries.
3. Preferences granted to foreign services and foreign service providers provided for in regional economic agreements, agreements on free commercial zones and other similar agreements which Vietnam has signed or to which Vietnam has acceded.
4. Tenders for provision of services for projects using aid funded by international or foreign organizations and other projects pursuant to regulations of the Government.
5. In other circumstances as decided by the Government.

Article 11 *Scope of applicability of MFN treatment in investment*

MFN treatment in foreign investment activities shall apply to investment and investors of any one country in the setting up, sale, acquisition, expansion, management, administration and operation of production and business establishments and to other investment items or determinations in other forms.

Article 12 *Exceptions on MFN treatment in investment*

The applicability of exceptions to MFN treatment for investment and investors of any one country shall be consistent with the laws of Vietnam and with international treaties which Vietnam has signed or to which Vietnam has acceded.

Article 13 *Scope of applicability of MFN treatment to intellectual property rights*

MFN treatment to intellectual property rights shall apply to all types of intellectual property rights which the State of Vietnam protects pursuant to the law of Vietnam and international treaties which Vietnam has signed or to which Vietnam has acceded, comprising:

1. Rights of authors[3] and related rights.
2. Industrial property rights with respect to patents, utility solutions, industrial designs, trademarks; geographical instructions including appellations of origin of goods, trade names, trade secrets, layout designs[4] of integrated circuits, plant varieties.
3. Rights to oppose competition deemed unfair by the law on industrial property rights, and other intellectual property rights.

Article 14 *Exceptions on MFN treatment to intellectual property rights*

MFN treatment to intellectual property rights shall not apply to the following:

1. Exceptions to MFN treatment provided for in international treaties which Vietnam has signed or to which Vietnam has acceded.
2. Provisions of law or practical measures which are essential to ensure law enforcement and protection of intellectual property, including requirements for representation and transaction addresses in Vietnam of foreign owners relevant to administrative procedures and trial procedures.

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[3] Alternative translation “copyright”.

[4] Alternative translation “topographics”.

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CHAPTER III

National Treatment

Article 15 *Cases in which NT shall apply*

The State of Vietnam shall apply a part or all of NT in the following cases:

1. When the laws of Vietnam provide for the applicability of NT.
2. When an international treaty which Vietnam has signed or to which Vietnam has acceded contains provisions on the applicability of NT.
3. When a nation or territory has in fact already applied NT to Vietnam.
4. In other circumstances as decided by the Government.

Article 16 *Scope of applicability of NT*

NT shall apply to the subjects within the category in article 2 of this Ordinance on the principles set out in article 4 of this Ordinance on the basis of compliance with the laws of Vietnam and international treaties relevant to NT which Vietnam has signed or to which Vietnam has acceded.

Article 17 *Exceptions on NT to commercial goods*

NT shall not apply to the following:

1. Procurements by the Government of Vietnam with the goal of consumption by the Government.
2. Subsidies granted to domestic manufacturers and subsidy programs implemented in the form of the Government of Vietnam acquiring goods manufactured domestically.
3. Regulations restricting the amount of time for which films are shown.
4. Domestic transportation charges calculated on the basis of commercial[5] activities of means of transportation.

CHAPTER IV

State Administration of Most Favoured Nation Treatment and National Treatment

Article 18 *Contents of State administration of MFN treatment and NT*

State administration of MFN treatment and NT shall comprise the following matters:

1. Promulgation of legal instruments and organization of the implementation of guidelines on MFN treatment and NT.
2. Decisions on the applicability or non-applicability of MFN treatment and NT.
3. Entering into, acceding to and implementing international treaties relevant to MFN treatment and NT.

[5] Literal translation is “of an economic nature”.

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4. Formulation and organization of the implementation of policies on MFN treatment and NT.
5. Organization of collation, processing and provision of information relevant to MFN treatment and NT.
6. Dissemination and popularization of laws and policies relevant to MFN treatment and NT.
7. Inspections and checks of compliance with the laws on MFN treatment and NT.
8. Resolution of complaints and dealing with breaches of the laws relating to MFN treatment and NT.

Article 19 *State administration bodies of MFN treatment and NT*

1. The Government shall uniformly exercise State administration of MFN treatment and NT.
2. The Ministry of Trade shall be responsible before the Government to carry out uniform State administration of MFN treatment and NT.
3. Ministries and ministerial equivalent bodies shall, within the scope of their respective duties and powers, be responsible to co-ordinate with the Ministry of Trade in exercising State administration of MFN treatment and NT within the sectors for which they have been allocated responsibility.

   The Government shall provide specific regulations on co-ordination between ministries and ministerial equivalent bodies and with the Ministry of Trade in exercising State administration of MFN treatment and NT.

Article 20 *Proposals and decisions on applicability or non-applicability of MFN treatment and NT*

1. The Ministry of Trade shall, after it has obtained written opinions from the ministries and ministerial equivalent bodies concerned, make proposals on the applicability or non-applicability of MFN treatment and NT within the sector for which it exercises State administration and submit those proposals to the Government.
2. Ministries and ministerial equivalent bodies shall, after they have obtained a written opinion from the Ministry of Trade, make proposals on the applicability or non-applicability of MFN treatment and NT within the sectors for which they exercise State administration and submit those proposals to the Government.
3. The Government shall make decisions on, or make submissions to the competent State authority to make decisions on the applicability or non-applicability of MFN treatment and NT.

Article 21 *Signing and implementing international treaties*

The signing, acceding to and implementing international treaties relating to MFN treatment and NT shall be implemented in accordance with the laws of Vietnam on signing and implementing international treaties.

Article 22 *Dispute resolution and dealing with breaches*

Dispute resolution and dealing with breaches relating to MFN treatment and NT shall be implemented in accordance with the laws of Vietnam and with international treaties which Vietnam has signed or to which Vietnam has acceded.

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CHAPTER V

Implementing Provisions

Article 23 *Effectiveness*

This Ordinance shall be of full force and effect as of 1 September 2002.

Article 24 *Implementing guidelines*

The Government shall provide detailed regulations and guidelines for the implementation of this Ordinance.

Hanoi, 25 May 2002

On behalf of the Standing Committee of the National Assembly
Chairman
NGUYEN VAN AN

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